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PROCEEDINGS

MISSISSIPPI STATE BAR

Forty-Sixth Annual Meeting

INDEX FOR VOLUME XXII

October, 1951

VOLUME XXII NUMBER 4

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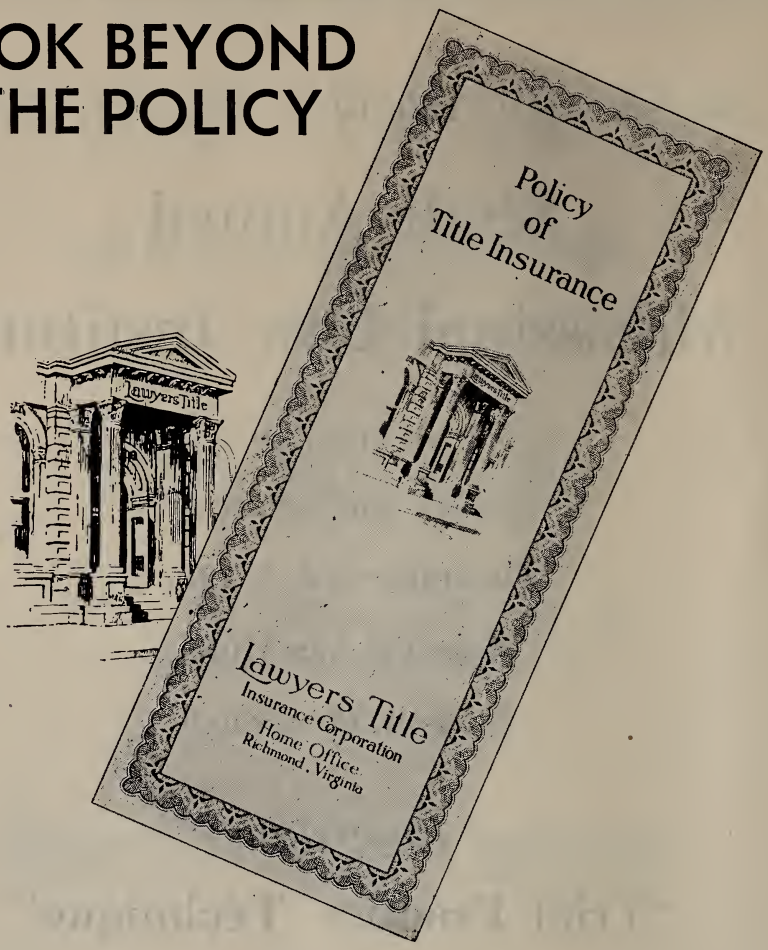

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GIBSON B. WITHERSPOON

Retiring President of Mississippi State Bar

PROCEEDINGS OF THE FORTY-SIXTH ANNUAL MEETING OF THE

Mississippi State Bar

Held at Biloxi, Mississippi, on

the 1st and 2nd of June, 1951

The convention was called to order in the Buena Vista Hotel in Biloxi, Mississippi, at 9:30 A.M., June 1, 1951, by Gibson Witherspoon, President of the Mississippi State Bar.

The invocation was delivered by Dr. J. N. Brown of Gulfport.

An address of welcome was delivered by Mr. J. L. Guice, President of the Harrison County Bar, and was responded to by Mr. George Woodliff of the Jackson Bar.

After introducing several distinguished visitors present at the Convention, President Witherspoon then delivered the following address:

PRESIDENT'S ANNUAL ADDRESS

Gibson Witherspoon

When you gentlemen very graciously selected me to be your president in this room a year ago, of course I felt highly honored, but awed by the great responsibilities of the office of President of our Mississippi State Bar. General Robert E. Lee said the greatest word in the English language was DUTY, and I've endeavored to be true to my duty and serve as president of the entire bar and not any particular segment. I have asked the guidance of Almighty God and in many ways we have had a most successful year. Certainly no president ever had officers and commissioners who cooperated more wholeheartedly with a planned program. You busy attorneys throughout the State who have given so very generously of your time and talents should also be recognized and are hereby thanked. To all of you who have helped in so many ways, I am grateful and appreciative of your contribution to your state association. Some of your commissioners have suggested that this annual address be devoted to the activities of our association with some humble suggestions for the future. Certainly when you have a president who has never claimed to be an orator, maybe this is a very wise suggestion. Then it is hoped that the many attorneys who are not present for our convention may read this report of our activities during the past year and become more interested in the work of your association in the future.

Let us take a quick look together at world affairs. All of the perils of re-armament, of mobilization, and of possible inflation will be worth the risks they necessarily involve and the costs we must pay in taxes and the sacrifices that we must make in military service, if they result in the establishment of a rule of law in international affairs. Korea must not become

another Spain, a proving ground for another world war. America is truly a peace loving nation, yet in less than thirty-five years we have been through two of the most terrible conclicts in all history, and today we are engaged in a war the scope of which is yet to appear. What lies ahead of us depends on mankind's ability to preserve world peace. In individual nations, internal peace has been achieved by establishing a firm legalistic foundation. So today, the law presents the only effective possibility of peace among nations. With man's growing capacity for destruction, with the atomic and the hydrogen bombs, the issue is crystal clear. We must choose between law or chaos. Despite the Marshall Plan and all the billions we are spending in every nation outside the Iron Curtain countries, communism is much stronger today in Asia than ever before. With inadequate leadership in our State Department, and with the misgivings of our people and the frustration of our youth, what is the real status of our nation on the home front?

The activities of our government in Washington are revealed by the increase in the Federal Budget from three billion dollars in 1936 to sixty-nine billion in 1951. The inflationary problem inevitably involved in such a gigantic increase in public expenditures is without precedent in either this country or anywhere in all the world.

The national debt has grown from one billion dollars at the start of World War I to 25.2 billion dollars at the end of the war and from sixteen billion at the beginning of the depression in 1929 to forty billion at the end of World War II, and at the end of 1950 it stood at 257.1 billion dollars, or the equivalent of $6710 for the head of each family present here this morning. Thus we are faced with unprecedented public spending, partly for political reasons, and we are bordering on the verge of being a bankrupt nation. Not only is America experiencing the hardships of maintaining a garrison state, but is faced with the specter of really serious inflation. Human activities are necessarily curtailed and channeled by the heavy hand of the executive branch of the government. Freedom as we customarily know it will be restricted and will tend to disappear the more intensive military preparations become. *Our great task as lawyers in such a period is to make sure that essential liberties are not needlessly sacrificed.* The immediate problem is to maintain the maximum of freedom under effective mobilization. Our next task as lawyers will be to regain our accustomed freedom, once the need for a garrison state has either disappeared or been moderated. But, political power is rarely surrendered without a struggle. These great objectives impose stern obligations on the members of our association and our citizens generally. Many citizens have given up in despair.

No less a personality than Earle Cocke, Jr., National Commander of the American Legion, on May 12, 1951, said:

> "Today only Amercan Soldiers and their handful of allies in Korea are waging all-out opposition to Communist aggression. Our State Department and the United Nations are only doing one-fourth as well. They have committed themselves half-heartedly to opposing Communist aggression militarily. But they are continuing to encourage such aggression politically, diplomatically, and economically.

"They are playing politics with the British to save Hong Kong at the cost of American lives. They are encouraging aggression diplomatically by their willingness to bargain for appeasment. They are encouraging further acts of aggression by sanctioning the trading with the Chinese and Russian Communists.

"This is the first time in American history that we have ever gone into a war afraid that we might make our enemy mad. A war is justified for one reason alone, and that is victory. The Chinese Reds have elected to fight us. They are doing everything they can to whip us. Yet our troops are ordered to pull their punches.

"The American people are told that we cannot blockade Red Chinese ports, cannot use Chiang Kai-shek's Nationalist Chinese forces, cannot bomb Manchurian Communist bases, and must not defend Formosa, cannot have General McArthur, cannot have a peace treaty with Japan—all because it might make Red China and Red Russia mad.

"We have become so filled with stupid internationalism that we are losing our American spunk, along with our American dollars. We are even losing faith in ourselves. We are lacking in confidence in our own judgment whenever it is questioned in the slightest by the socialistic schemers and Downing Street.

"This is not the way America was built into a great Nation and preserved in the past. Our backbone has always been courage and boldness, from the days of the minute men. Our greatest need today is a foreign policy American in concept, American in origin, and American in objective. We have the power and the strength to back up such a policy. We must divorce ourselves from a diplomacy of expediency. We need statesmanship whose first purpose is to stand up for what is right. If we give that kind of leadership to the free world, other nations will follow us and we won't need to give away our birthrights to buy allies and friends! The world today is crying for aggressive moral leadership."

Your president believes that in Mississippi we have adequate moral leadership within our Mississippi State Bar.

The lack of interest of our electorate is one of the most alarming facts in American life this morning. In 1940 sixty per cent of the eligible voters cast a ballot in the presidential election. In 1944 fifty-six per cent voted and in 1948 only fifty per cent voted. If this trend continues the next president will be elected in 1952 by majority of the minority of the electorate. This is especially alarming when we contemplate the large vote of government employees and the special minorities who vote as a bloc. In the oppressed countries of Europe, who have known the freedom of the ballot only a few short years, we see in Austria ninety-five per cent of the electorate voting and in Italy ninety-eight per cent. Much of the lack of interest in our government is due to the fact that local government has become increasingly unimportant over the last half century. It is at the local level that the citizen feels that he can really make his vote count.

But it is not my purpose to come to you this morning as a Moses who will lead you out of this wilderness and into a promised land. My only purpose is to say to you, that realizing these are serious times, your State Bar has taken some practical steps which we hope will meet with your approbation. We should all strive together for an independent Bar and judiciary unhampered in the administration and the practice of law. We should take a united stand against the inroads of government regimentation upon the legal profession.

It has been reliably shown that less than two per cent of the people in the $2,500 income group, which constitute the bulk of our population, actually consult lawyers from the cradle to the grave. Our picture shows, radio program, television, and fiction have all seemingly united to discredit the dignity of our profession and put all attorneys in the shyster class. In the recent crime committee investigations millions of people saw the lawyer furnishing his client the proper answer. The aversion and hostility felt against the witness often embraced his lawyer too. Let any lawyer make a mistake, and immediately it is headlined in all papers of America. Thus, it is felt that our Bar should take the lead in good citizenship for our State and Nation, and improve our public relations generally at local levels and on State levels.

The picture which comes to the minds of many Americans when they think of a lawyer is the scheming scoundrel of the movie thriller, the shyster portrayed in the radio soap opera, or the unsavory character given great prominence in the daily newspapers for his conniving with the hardened criminal or for a violation of professional ethics.

Most movie and radio writers and newspaper editors would admit that this picture of the legal profession as a whole is utterly false. The facts remain, however, that lawyers, as a profession, are more maligned and receive rougher treatment in the public eye than any other professional group.

When it is considered that American society, as we know it, could not function without lawyers, the attitude of the public towards the profession assumes vital importance.

In the world and times in which we live, with freedom all over the world losing out to the oppression of tyrannical states, a better understanding of the function of the legal profession in a democratic society is essential.

But the underlying cause of misunderstanding is perhaps due to our education system and to the failure of lawyers themselves to explain to the public their role in the community. So, today, we as lawyers must keep abreast of the times, and we must be more conscious of our relations to the public generally.

Kentucky has put on a series of radio broadcasts to enlighten the citizens of their state as to their need of attorneys in preparing a will, purchasing a home and many other such every day needs of the average citizen. It is recommended that the incoming administration inagurate a similar plan to that which has proven so successful in Kentucky. Your association has joined the Conference of Bar Association Presidents and the exchange of ideas with officials of other states is most helpful. Our bar is faced with the problem of operating on the small annual dues and

paying the higher costs of stationery, publication of the Journal and everything else that we have to purchase. To have an active and strong organization, adequate finances are necessary. There are many worthwhile projects your Association could sponsor, if we had adequate income. For example, we could sponsor a state wide Traffic School for all Highway Patrolmen, Traffic Officers, Constables, Municipal Judges and Justices of the Peace. Each year Colonel Birdsong sends several of his outstanding patrolmen to Chicago to the Traffic School, sponsored by the American Bar Association. They are very much impressed with the faculty and the courses presented. If we paid three men's railway fare from Northwestern, Chicago to Mississippi, we could have the same school put on here. Wouldn't it be fine to have all the newly elected J.P's, Constables and others assembled and instructed in the procedure in traffic violation cases? Such a project would be a worthwhile contribution to our State and its law enforcement officers. It is realized that many will disagree with this suggestion and object to our association spending any money on such a proposed project. But, my friends, we of the Bar certainly need better public relations. It is believed such a project would meet with universal public acclaim. We might just sponsor the project and secure contributions from insurance companies, and others, to provide the cost of the program. Do we need better public relations?

The first fee I ever made was for a divorce case. The minimum fee for a white divorce was charged—this was in 1927. A carpenter friend was earning 25c per hour then, or $2.00 per day, and he'd do an honest, full day's work. The Junior Bar has just passed a schedule of rates in Meridian, and recommends that divorce fees be the same minimum as it was in 1927. I was happy to note the minimum in Harrison County is twice as much. Our carpenter friend now gets $2.25 per hour, or nine times the amount he received for the same work in 1927. A $3,500 home in 1927 costs over $18,000 today. Office furniture, stenographic help, and every need in your law office has increased in price, but our legal fees have not kept pace with the rising inflationary prices. There will always be a wide diversity of views as to the value of the lawyer's services. That is why we have Tiffany on one side of 5th Avenue and Woolworth on the other.

Now, in Iowa a few years ago, the State Bar Association called in some nationally known poll takers. They conducted a very intensive study and found in that state the public rated the ministers as the highest profession, then the doctors, bankers, undertakers and the lawyers fourteenth and the dentists fifteenth. They did something about it. They disbarred some of their members, they straightened up some members by reprimand, members who were operating in the twilight shadows, and they raised their standards for admission to the Bar. They have increased their fees and their general standing in every community and in their state. We have not conducted a poll in Mississippi of the popularity of the members of our Bar with reference to other professions, but it is safe to say we would not lead the list. Our program this year was conceived and designed to help us with our public relations generally, and to raise the standard of our profession particularly.

Our Bar was organized and united on the proposal to increase the number of our Supreme Court Judges from six to nine. Through the

press and radio, the lawyers in every county convinced the public of the need of this increase and the vote was most gratifying. This shows us what we can do when we unite on something. From the volume of mail received, the public really appreciated the guidance of the bar in this instance. This incident certainly helped our public relations in Mississippi.

Five new committees were appointed this year, and will give you a brief report on why these committees are needed. There are some things our bar will never be united on, but there are many things that we are united on and we should stress our united front in the future.

When a client walks into your office, the necessity immediately arises for you to be in a position to advise this client on tax matters. Even in drawing a will, we should know what course would result in the greatest benefit to client and take some of the heavy tax burden from his wife and children. Accordingly, we have established a Tax Committee and have secured outstanding convention speakers on this subject. It is recommended that this committee be continued during the coming year, with personnel approved by the incoming administration. The heavy Federal Taxes are with us to stay for a long time, and certainly it is important that the lawyers keep abreast of these trends and our association should sponsor the work of this committtee in every possible manner.

The Tax Institute at Mississippi Southern, which was well attended, is a step in the right direction and certainly promotes our public relations with the Mississippi Society of Certified Public Accountants. Saturday morning we are not only going to have the privilege of hearing a government expert speak on practice and procedure before the tax courts, but also are going to hear an outstanding authority and a great lawyer, an Alabama boy who went to Washington and made good, bring us an address on the taxation picture from the citizen's viewpoint. The Mississippi Society of Certified Public Accountants are invited to attend this session.

At last year's meeting, President Thompson spoke on Legal Aid and the Lawyers' Reference Plan. We have a committee this year to study the advisability of such a program in at least some of the larger centers of our state. On your program you will note that this committee has combined with the Study Committee. The matter of legal aid and lawyer reference plan should be worked out with our Study Committee.

More attorneys make money out of insurance companies than any other source of revenue in Mississippi. Some work for them regularly, others defend them in our courts, and still others sue them in automobile and other type cases. Therefore, we have an Insurance Committee this year, and it is hoped that their able chairman will advise us how to make money out of Workmen Compensation cases. We have an able speaker from the Home Office of one of the leading insurance companies and also a great trial lawyer, who usually sits on the other side of the table. So, in the insurance field we have some very able men to keep us abreast of the times.

Whatever branch of law you like best, you will nevertheless have much dealing with the Negotiable Instrument Law. After fifty years, this law needs some changes, and the National Conference on Uniform

State Legislation, has promulgated a revision of the N.I.L., the Sales Act, the Warehouse Receipt Act, and wrapped them in one package—the new Commercial Code. When the original N.I.L. was proposed, Mississippi was the last state in the Union to pass it. Largely by the efforts of Audry Shands, then president of our association, and the pressure of our banker friends, this uniform law was enacted. Mississippi was largely agricultural then. With our increased commerce, we should not be the last state in the Union to adopt this new code, if it is practical for the great industrial and commercial states of the East. Commerce knows no state lines, and if your banker should ask you about the new proposed Commercial Code, you should certainly know something about its contents and its composition. Therefore, we have appointed a committee to study this new proposed Code. Earl Thomas of Jackson was the chairman and he has done a fine job of getting the members to study and report on various parts of the Code. Because of illness he will not be able to give us a report, but David Welch of Laurel, the able co-chairman of this committee, will deliver the committee's report. We have a very fine speaker on this important subject also: Mr. Francis Ireton of Baltimore. He is not a paid drafter for the Code, but a practical attorney who handles many thousands of transactions each year in Mississippi, as well as many other states of our Union. The New Commercial Code is a carefully studied instrument, more compact, better indexed and organized than the present N.I.L. The great scope of the code, its omnibus concept, the great amount of work already done on it, together with its far reaching effect on all commercial transactions, commends it to our careful consideration. For the very same reasons it should not be rushed into enactment until thoroughly publicized, considered, studied, discussed and criticized. Our hard working committee and our speaker will help each one of us to better understand this important legislation.

It is our recommendation that the Taxation and Insurance Committees be continued by the incoming administration. Our Bar may even grow so large that we may in the future wish to have separate sectional meetings for these and other committees. Such a plan would enable those interested in such subjects to devote more time to these subjects and have more of a workshop session.

Then the other new committee which was appointed has nothing to do with the technicalities of a specific branch of our law, such as insurance or taxation. It can be of tremendous influence, however, in our public relations. This new committee is known as the American Citizenship Committee. You may ask, well, what has our Bar to do with Citizenship? When the fifty-five representatives gathered to draft our Constitution, thirty-five of these framers were lawyers and ever since the very inception of this nation, the lawyers have been the guardians of the individual's freedom and the guarantor of his property rights. In co-ordination with our Junior Bar Section, a chairman and co-chairman has been named in each of the 82 counties of our state. Their purpose is to have programs in every school in the county—both white and colored—on the responsibilities and blessings of American Citizenship. After the speakers have delivered their address, the teachers often give a test on what was said, and thus an evaluation of

the subject matter is ascertained. No, the committees did not function in all of the counties, but in counties like Hinds, Neshoba, Warren, Wilkinson, Grenada, Tallahatchie, Jeff Davis, and Simpson, they were very successful. Of course, it is discouraging to set up the committees and send out the literature and then have nothing accomplished. We were wondering if it was worth all the effort, and one day the answer was forthcoming. We met a small boy with some of his teen age school mates, and he asked about where I'd been. I told him I had been up to the capitol doing some bar work. He announced to the group that I was president of the State Bar in about the same tone as he would say that he used to play baseball. To my amazement all of the group were immediately interested. One asked, "You are responsible for Fred Lotterhos coming to our school, aren't you?" "He made a wonderful speech", said another. "The girls and boys both enjoyed him", was another comment. If you could have seen their faces, my friends, you too would be sold on the continuation of our American Citizenship program, not for just another year but for our posterity. Today when we see the corruption in government on local and national level, when crime is profitable and popular and when mink coats and deep freezers are used freely for influence, we need not despair. The only hope for democracy is a more enlightened youth, and we hope the Junior Bar will assist in the continuation of this program. Confucius once said, "One generation plants trees in order that another may sit in the shade." Let the Bar do our part for a more enlightened youth.

Ladies and gentlemen of the Mississippi State Bar, your attention is directed to the two posters that have been used in our American Citizenship program. These exhibits are referred to not because any of you need a pep talk on Citizenship, but so you will better understand the progress your committee and your association is making in bringing this program to the level of our children. On your right is a poster depiciting the principles on which our government was founded. If we wish liberty for ourselves and our posterity and for the world, we will have to go back to the fundamental belief on every coin which is minted by our Treasury and again realize that "In God we trust". We must return to a constitutional government "of the people, by the people, for the people", not a government operated for a political party or special groups, but a government whose concept is for the benefit of all the people. When we accomplish this, then the dreams envisioned by our founders will be realized,

To form a more perfect union
To establish justice
To insure domestic tranquility
To provide for the Common Defense
To promote the General Welfare

and in so doing secure the blessings of liberty to ourselves and our posterity.

On your left, we have another poster that has proven popular in the schools. If we desire the blessings of liberty, what are some of the practical principles necessary for success? These are good for all

local communities, and it is splendid for our own Mississippi State Bar, which is more united this year than ever before. Our great country was founded on principles found in the Bible, and from the lessons of history and nature. If we build on this firm foundation, "In God we trust" and develop by the processes outlined in the other steps, "Accurate information" and "Exchange of Ideas and Opinions by Free Discussion" we will achieve "Common Understanding", "Sympathy", and "Co-operation by voluntary team work" and ultimately the final goal which supports firmly our flag in this poster, and which will always maintain it flying high and respected all over the world—"UNITY".

If communism ever succeeds in America, in my opinion it will not be because of a land invasion, but because they succeeded in first creating disunity among our citizens. Sometimes the noble school teachers or the strikers in our factories can not secure raises because we all must sacrifice to provide for the common defense. If through our American Citizenship Committee, we can instill these fundamental principles into our youth, our program will have been an outstanding success.

Another suggestion is to have Circuit Court Judges cooperate with the League of Women Voters and the Circuit Clerks and invite all the citizens who have just become twenty-one to come to court on the opening day and sit on the front rows in a reserved section. The Judge can tell them of their duty to vote and other matters of citizenship and then invite them to hear his charge to the grand jury, so they will know something of the criminal statutes.

We are getting help from the American Legion, the P. T. A., the Superintendents of Education, the League of Women Voters and many other organizations, and if we all work together we should have a very fine plan in a few years which would work on the local levels and which will make the lawyers' efforts and influence felt in each community in the future.

Vaughn Watkins has interested a group of Jackson businessmen in getting out a citizenship booklet for high school seniors, which will contain all the newly elected officers of our state.

When I think of all the organizations and individuals who have helped us so faithfully in our American Citizenship Program, I'm reminded of the wise old Swiss baron who decided to erect a cathedral in memory of his wife. On a ledge overlooking the village, he built a beautiful edifice. When it was dedicated, and all the nobility were present, he confessed that his money had been exhausted and he had to forego having a powerline run across the Alps and they had no lights. Immediately someone volunteered a contribution, but he said no. He had purchased some brass oil lamps, and he assigned each family a pew and to each he gave a lamp. The wise old Baron has long since died, but even today when the chimes ring out in the twilight for the vesper services, someone from each family is always present with their lighted lamp and through cooperation and concerted effort, the Cathedral is always bright and the fellowship inspiring.

May I ask of you gentlemen continued cooperation for your State Bar Association, and its program in the future. As the flowers turn to the sun, so I hope that you will turn your effort and your support to the new officers of our association.

May each of us always hold high the light of good citizenship in our community, and our state, and ever uphold the dignity and honor of our great profession.

Gentlemen, again I say, I thank you.

The next order of business announced by President Witherspoon was the reports of various committees. The first of these committee reports was that of the Administrative Law Committee, submitted by Julian P. Alexander, Jr., Chairman, and read by Mr. Erskine Wells. This was followed by the report of the Memorial Committee, given by Mr. Quitman Ross. These reports appear in Appendix A.

The report of the Committee on Procedural Reform was then given by Mr. Phil Stone. At the conclusion of this report, which may be found in Appendix A., Mr. Stone moved that the report of the Committee and the attached bill be approved by the convention. This motion was seconded, voted on, and carried. This report and proposed bill may be found in Appendix A.

The next report was that of the American Citizenship Committee, submitted by Harvey McGehee, Chairman, and given by Mr. Sydney Smith, Jr. This report may also be found in Appendix A.

President Witherspoon then presented Mr. Ross Barnett of Jackson. Mr. Barnett introduced Mr. James D. Palmer of Washington, D. C., who delivered an interesting and informative address on "Citizenship and the Lawyer".

At the conclusion of this address President Witherspoon introduced Judge Virgil A. Griffith, who discussed with the Bar the question of whether the office of the Reporter of the Supreme Court should issue advance sheets, which would be published and delivered to subscribers on Monday next following delivery of the opinion on the preceding Monday.

President Witherspoon then called for the report of the Budget and Finance Committee which was given by its Chairman, Mr. J. Kearney Travis. At the conclusion of this report Mr. Travis moved the adoption of the report, which motion was seconded and carried. This report may be found in Appendix A.

The meeting then recessed for the morning.

FRIDAY, JUNE 1, 2:00 P.M.

President Witherspoon called the meeting to order and presented Mr. Sydney Smith, Vice-President of the Bar. Mr. Smith introduced Mr. J. Francis Ireton, Chairman of the American Bar Commissioners

on the Commercial Code of the American Bar Association, who delivered the following address:

THE COMMERCIAL CODE

J. Francis Ireton

Mr. Chairman, distinguished guests, ladies and gentlemen of the Mississippi Bar, and your friends. After such a flattering introduction I can hardly wait to hear what I am going to say. I really think that my good friend, Gibson Witherspoon, in inviting me to be here has been guilty of perpetrating a fraud on you, but the inducement of a visit to your fair Gulf Coast to be with you, was too tempting a bait for me to have the moral courage to refuse.

Frankly, though, last September, when Mr. Witherspoon asked me to come down here, I was a whole lot more familiar with the Commercial Code than I am today. Last September we had a Spring 1950 draft of the Code that consisted of 839 pages of text, notes, and comment, which included 419 sections. Judge Goodrich, the Director of the American Law Institute, has somewhat facetiously referred to it as the Sears-Roebuck catalogue.

Since January 1st of this year, 105 of those 419 sections have been re-written entirely, with change in substance. You can imagine what that did to the other 314 Sections of the Code. Aside from that, another 150 sections were re-phrased to express more clearly what was intended by those sections in the Spring 1950 draft. A new edition just came off the press about a month ago, two hundred and some pages with 404 sections in it. I am at that point now that I was back in 1945, when I took my first look at the Code. I haven't too much of an idea of what is in it.

Now in any short period, even an entire day, it would be impossible to discuss in any detail all of the provisions of this Code. I trust you will bear with me if my talk is somewhat general, but I hope it will be a little informative.

To give you some idea of the magnitude of this project, we might first consider the earlier laws that we have in this country that this Code will supplant.

First of all, back near the end of the last century, there was considerable agitation for codification, probably following the English Bills and Notes Act and Sales of Goods Act. The Commissioners on Uniform State Laws came into existence in '88, and their first project was a Uniform Negotiable Instruments Law which they promulgated in '96. They followed that, in 1906, with the Uniform Sales Act. In those two codifications they set forth all the law then known in this country affecting bills and notes and the sale of goods. In 1909, they promulgated the Bills of Lading Act and the warehouse Receipts Act, in spite of the fact that the Sales Act they had just adopted three years previously contained sections relating to bills of lading and warehouse receipts. In 1909, they also adopted the Uniform Stock Transfer Act. Then in 1918, they promulgated the Uniform Condi-

tional Sales Act and in 1933 the Uniform Trust Receipts Act. If my memory serves me correctly, I think Mississippi just two years ago adopted this Uniform Trust Receipts Act.

In addition to those Uniform Acts, there are a number of other commercial statutes that have received more or less wide acceptance which were not approved by the Commissioners on Uniform State Laws but have been sponsored by various groups such as the Bank Collection Code of the American Bankers Association and the Factor's Lien Laws which have been sponsored by factoring companies located in New York, where the financing of the textile industry is centered. Another recent statute is the Assignment of Accounts Receivable Statutes, which have been adopted in over twenty States, since the *Klauder* case[1] was decided. Then there are the innumerable and varying bulk sales, mechanics liens, landlords liens, automobile registration and certificate of title laws as well as laws relating to pledges, field storage warehousing, and other forms of chattel security. All of this tremendous body of law developed over more than half a century is to be changed, and this Code takes its place.

The scope of the Code really is staggering; it is pre-natal to post mortem regulation of personal property. It touches and affects every industry and every commodity capable of being bought or sold. Take the sheep herder in Orgeon, who clips the wool from his sheep, sells it to a Boston buyer for ultimate production into wool clothing. Take iron ore from Minnesota that is processed and goes into the manufacture of hardware, machinery, automobiles, and all the domestic appliances such as radios, washing machines, and what not. Take your cotton in the South that is pulled, ginned, warehoused, shipped, combed, and finally ends up either in a piece of clothing or a seat cover on an automobile or it may be under the macadam on the roadway, or on the wall of a home. There is not a single item of personal property you can conceive of that this Code does not directly affect.

The Code, as of now, consists of ten Articles:

Article 1 is the general article having to do with definitions and general rules.

Article 2, the Sales Article, is a revision of our present Uniform Sales Act.

Article 3 deals with Commercial Paper, which will take the place of our present Negotiable Instrument Law.

Article 4 has to do with Bank Collections.

Article 5 is something new in the way of a statute. It deals with Letters of Credit.

Article 6 covers Bulk Transfers.

Article 7 deals with what is known as Documents of Title, such

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[1]Smyth v. Klauder, 52 F. 2d 109 (1931), *Cert. denied,* 284 U.S. 681 (1932).

as bills of lading, warehouse receipts, dock warrants, and other types of bailment of goods.

Article 8 deals with what is called Investment Security, such as stocks, corporate bonds, etc.

Article 9, which is the most difficult in the entire Code, deals with secured transactions.

Article 10 is a formal repeal and effective date provision.

Now the first question that probably would occur to anyone considering the Code is, why a Code? What is wrong with what we have now? Is there any crisis impending that demands change? Is there anything that necessitates all of this revision?

Well, first of all, we really do not have uniformity in this country insofar as commercial laws are concerned. It is true the Warehouse Receipts and Negotiable Instruments Laws were adopted in every State, but the Uniform Sales Act in only about ten, the Bill of Lading, Stock Transfer and Conditional Sales Acts in very few, the Trust Receipts Act in about twenty-six.

These Acts have not received the wide acceptance their sponsors anticipated and it is thought a new integrated code, modernized, would be easier to sell as a package, rather than the old seasoned Acts which did not sell.

Dean Butelle of the Nebraska Law School has pointed to seventy-seven instances where conflicting interpretations have been made by courts under the Negotiable Instruments Act; the law that was passed to promote and establish uniformity. The same is true to a greater or less degree of all the Uniform Acts. So we do not have uniformity of interpretation, and the present Code is an attempt to iron out these differences and produce some real uniformity.

Aside from these two basic reasons, we are told that there are a number of minor reasons of detail.

Let's take the N.I.L., and we would like to mention briefly just a few items to give you an idea as to why a Code may be thought necessary. This law contains elaborate protest provisions which today are completely unnecessary and ignored almost universally. Then there are the seventy-seven points in the law which have been the subject of different interpretations by different courts. Again there is very little in the N.I.L. that has to do with checks. When that Act was promulgated, checks did not occupy the position they now do in ordinary daily commerce. On the question of the application of the N.I.L. to corporate bearer securities there is considerable conflict.

Our present Uniform Sales Act, which has not received wide acceptance, conceives of a sale of goods as an adversary transaction. The law conceives a sale to be an arm's length transaction with neither party to it completely trusting the other. A sale actually should be a joint venture; both parties enter into it with the expectation of a profit. To a certain extent, they are partners in an enterprise. The concept of an adversary position should not exist in the sale. The

Statute of Frauds in the present Uniform Sales Act more often than not, is used as a shield to evade justice rather than promote justice.

The present Sales Law is uncertain as to the right of a buyer, on an anticipatory breach by the seller, to cover his damage by another purchase. Some courts treat this as a recision by the buyer and deny him a right of recovery for damages. The present Sales Act is uncertain in its application to goods made specially to order. Some courts have denied the application of our current statutes to such situations. The present Sales Act overlaps the Bills of Lading Act and the Warehouse Receipts Act with respect to documentary title to goods. Our Sales Act contains no definitions of terms such as C&F, CIF, FAS.

It is said that the greatest difficulty with our present Sales Act today is that practically everything in it is predicated on who has title to the goods. If title has passed to the buyer, then there could be a recovery by the seller against the buyer for his price, otherwise he is relegated to his action for damages. If title has not passed then the seller might replevin or reclaim the goods in the buyer's bankruptcy proceedings. The thing that determines the passage of title under our present law is the presumed intention of the parties. Our law says that the parties should have had an intention, and while they may not have given a thought as to precisely when title should pass, nevertheless the law presumes an intention for them and they are bound by it. When practical business men are dealing together, it is now thought that the result of what they do should not be determined by some intangible thing such as "a presumed intention of the parties" as to when title passes.

We also have not had complete uniformity of interpretation of these rules by which intention of when title passes is presumed and determined. On the surface, it would seem that this solution of when title passes is the solvent of all questions, but careful study discloses that these rules leading to a presumed intention can be a trap.

A seller enters into a contract with a buyer. He writes, "I have this day sold my stack of hay to buyer for $10.00 a ton, delivery to be made September 15th, subject to buyer's weight." The price of hay goes up before September 15th and the seller can't resist the temptation to sell, not at $10.00, but maybe $12.00 a ton, to somebody else. The buyer learns of this, and wanting his hay at $10.00 a ton, he files replevin against the seller. There are cases where the courts have held that title passed because of the words, "I have this day sold". Substantial justice is accomplished. The Courts don't like the idea of a welching seller defrauding his buyer to his own advantage, to make a better sale. So the courts hold that title has passed, and the buyer can reclaim or replevin the goods at $10.00 a ton.

But let's take the identical contract with a different twist in subsequent circumstances. Before the hay is delivered, it is destroyed by fire. Courts have held that there has been no transfer of title, since delivery had not been made and therefore, the loss was on the seller. Again the court has reached a just result. Possession of the

goods was in the seller; he had control over them; he could take care of them; insure them; they were damaged while in his possession. So, on the same state of facts as to the formation of the contract, we have contrary answers by the courts to reach what, in the court's opinion, was a just conclusion. Thus, where title precisely rests in any situation is quite a problem and the statute furnishes no solution at all.

The revision of the Sales Act in the Code does not eliminate, it merely minimizes this question of title. Title ceases to be important in determining risk of loss, right to reclaim, or replevin, or the right to sue for the price. The Code specifies and sets forth the rights and liabilities of the parties by precise definition in a step by step performance of the contract. Title ceases to be important. The Code says that risk of loss passes when delivery of the goods is actually made, and that is all there is to it, except in the case of the merchant buyer then risk of loss passes to such a buyer when the seller makes a tender of delivery. Throughout the Sales Article in the Code, there are those specific rules that prescribe the rights and liabilities of the parties, and thus avoid this mumbo-jumbo of presuming who might have title.

The Sales Article in the Code defines the various terms that are commonly used. It imposes an obligation of good faith on the parties. The conception of a sale is that it is a joint venture, where both parties must do everything they can reasonably do to promote the transaction into which they entered.

As to our present Warehouse Receipts Law and Bills of Lading Law, their language is somewhat redundant. The former does not cover certain types of bailment particularly common today, such as dock warrants or other types of storage or bailment of goods not represented by negotiable or non-negotiable receipts and the latter is completely silent insofar as air and truck freight is concerned. The Code attempts to clarify the present law and make it applicable to air freight, trucking, and these other types of bailment which are fairly common.

The Commercial Paper Article of the Code is not applicable to corporate securities so far as bearer bonds, stock, etc. are concerned. In order not to leave a hiatus there is therefore a new article in the Code entitled "Investment Securities".

Professor Glenn said many years ago that, "the Banker is the consort of the Merchant". Pinch one and you hurt the other. So, we have another new Article in the Code dealing with letters of credit as to which there are no statutes today. Letters of credit are becoming more common in every day use, not only among bankers but among merchants seeking some guarantee of payment or performance of a contract. A seller, for instance, will have a sale for a certain type of commodity that it must fashion for a particular purpose. It may be a little dubious about the credit of the buyer, so it wants a guaranty or credit letter from somebody that the buyer will take and pay for the goods.

Again our current law respecting chattel security presents a va-

riety of forms for obtaining a security such as the chattel mortgage, conditional sale, trust receipt, factors lien, etc., all of which have grown out of certain situations which greatly restrict their use and availability.

These types of security arrangements have grown out of what might be called the felt necessities of the time that produced them. They fitted a certain situation when it came into being. The result is you can't use a conditional sale in connection with a loan. It is not practical to use a chattel mortgage in connection with a sale. A seller can't use a trust receipt to secure himself for the sale price of his goods. A field storage warehouse can't be used if it is impossible to segregate the inventory that is to be covered in a pledge that must exist under the field storage warehouse. Financing institutions are required to select from these varying types the particular form of security that would be safe for them to take. This risk of selection is something that is unnecessary, because after all is said and done, all of these security arrangements produce but one thing, and that is a lien.

So, the Code in Article 9 takes all of these security arrangements and abolishes them, and in their place, creates a single solitary lien that can be used in any kind of situation. Problems of description and recording requirements differ with respect to certain types of security arrangements, but fundamentally under the Code we have but one lien.

These are some of the reasons advanced for a new Code, a fresh start. This may also give you a clearer picture as to just what this Code embraces. The idea, the origin, the conception, and really—to date—the carrying out of that idea has been magnificient. This Code has done more to stimulate legal thinking in this country, with respect to commercial transactions, than any single thing that occurred in our legal history. If this Code comes to fruition and becomes law, it will be the most revolutionary thing that ever occurred in English legal history.

Next, the question might be asked, how did it begin and who is doing this. Back in the early 1920's a number of people expressed dissatisfaction with the Uniform Sales Act. Toward the end of the thirties the Merchants Association of New York prepared for introduction in Congress, a Revised Sales Act to govern interstate transactions. The Commissioners on Uniform State Laws heard of this, and prevailed upon them not to push this Congressional Bill on the condition that the Commissioners and the American Law Institute would jointly sponsor a completely new commercial code governing not only sales, but commercial instruments, warehouse receipts, secured transactions, etc. That was the beginning of the project.

For the first two or three years of the last decade, work went on pretty much on the sales article, only the work was given very little publicity. By 1945 it was impossible to find a copy of the revised uniform sales act that by then had been approved by the Commissioners and Law Institute. Work slowed down somewhat during the War years. Following 1945, the work went on apace on the other articles in the Code. The first draft of some, such as Article 9 dealing

with Secured Transactions, did not appear until 1948. While the Code has been the subject of study for ten years ,actually most of it has not been the subject of study for that long a period.

Dean Beutel in a recent article in *Law and Contemporary* Problems,[2] was most critical of the method by which the Code was processed through the Law Institute and Commissioners. A draft would be prepared by a group of the Reporter's Staff consisting mainly of law school professors, the Chief Reporter being Karl Llewellyn, of the Columbia Law School. Each group of Reporters drafting a particular Article had a group of advisors, consisting of judges and practicing lawyers. Some of the Articles received a very thorough and careful analysis and study. I think the Commercial Paper Article, Article 3, is a good illustration of such care and study. Some of the other articles as drafted by the Reporters received nothing more than a cursory examination. In the latter stages some of these Articles underwent a complete overhaul as the result of vigorous protests from industries affected.

The sponsors of the Code had originally intended to approve it finally in September 1949, at their meeting in St. Louis, although in the opinion of many the Code had not then reached the perfection it should have had and outside of comparatively few people, no one knew anything of it. At that time several affected industries came out with strong pleas against it and publicized their position all over the country. The result was revision on revision to such an extent that you now would never recognize the September 1949 draft of the Code in the current draft. In the spring of 1950, a new draft was published and distributed as the proposed final draft of text and comments to be approved at Washington in May 1950. Committees of various Bar Associations adopted resolutions requesting deferment of final approval for a period of two years until 1952 so as to give more people time to study the proposal. Difficiencies were pointed out that made the whole project suspect. The sponsors claimed that for financial reasons they could not continue the work for two more years but they did defer final approval for one year until May of 1951. Since the May 1950 draft many further changes have been made, as I indicated at the beginning of this talk. The result was that in May 1951 an entire new draft was distributed and in May 1951 the sponsors approved, in principle only, the Spring 1951 edition of the Code which is the proposed final draft number two. That draft does not contain any comments. They have not yet been written. It contains only the text of the proposed statute. The comments are almost essential to a full understanding of the various provisions of the Code. It is most unfortunate that the sponsors must now call a halt because the work they have done to date and the results accomplished have been tremendous.

What of the Code as it now stands? First of all, many of the changes that have been made since January 1951 of necessity have been done somewhat hurriedly. Many of these changes of substance

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[2]Beutel, *The Proposed Uniform Commercial Code as a Problem in Codification,* 16 Law & Contemp. Prob. 141 (1951).

have resulted from views and opinions expressed by affected industries and there is no doubt that many of these changes should have been done long before this year. Sizeable segments of business are still in oppositions to the Code. Much that is in the Code is undoubtedly good, but it is so big, so far reaching, so important that there is a fear as to its possibilities and its impacts.

The Code consists of a lot of new language, new definitions, that will make for difficulty in interpreting. This trend toward different language and style has probably gone too far to do anything about it. The sponsors of the Code deliberately set out to use new language, so that they could definitely and irrevocably cut away from the law we have had heretofore. They have done a most complete job in this respect; but the use of this new language is bound for a time to promote uncertainty of interpretation and may result in a lack of uniformity in cases applying the Code. It is unfortunate that the use of time honored and well defined words and phrases, whose meaning is commonly understood, was decided against.

There are several points with respect to each Article that I would like to mention briefly.

First of all, the Sales Article. Professor Williston, undoubtedly an authority on the law of sales, has been outspokenly critical of the Article. In an article in the *Harvard Law Review*[3] he points to a number of sections illustrative of bad drafting, improper policy, etc. His chief complaint is the discarding of the title theory and substituting specific rules regulating rights and liabilities, and he points out that the English, Canadian and Australian sale of goods laws all are modeled on what we copied from originally and are all based on this title theory. This different approach in the Code is apt to disrupt commerce between this country and other English speaking Commonwealths.

Again there is a provision in the Sales Article which permits a Court to declare void an unconscionable contract. But there is no satisfactory definition of what is unconscionableness. A comment in earlier drafts indicated that unconscionable and unreasonable were synonymous. There is no definition of unconscionableness amounting to legal fraud. This is one Section of the Code that will create a tremendous amount of difficulty.

There is another feature of the Sales Article that needs a lot of consideration. The Article sets up two classes of persons, merchants and non-merchants. It describes a merchant as being one engaged in a particular line of business or where he holds himself out as having a special skill in a particular business, and a financing agency, such as a bank, is in connection with any commercial transaction, a merchant. Now there are certain obligations and liabilities imposed on merchants that are not imposed on non-merchants. Of course the first difficulty here is the question of definition. What is and what is not a merchant. We will pass that for a minute, although I can think

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[3]Williston, *Law of Sales in the Proposed Uniform Commercial Code*, 63 HARV. L. REV. 561 (1950).

of housewives who are much shrewder, much more of a merchant than a number of real merchants. Assuming you can differentiate the two classes, should we in our law set up a different set of standards for the merchants, and another for the non-merchant. We might as well have one set of standards for a college graduate, another for a high school graduate; one set of standards for a doctor or scientist (proverbially absent minded) and another for an osteopath or a lawyer. I am not convinced that the concept of dividing people into groups, and imposing on those groups different rights or obligations is sound. This is something we should think about.

Another thing in the Sales Article that is new and somewhat startling is that consignment transactions are treated as security arrangements. A consignment of course, is not a security arrangement at all. It is an agency. The Code in ultimate effect makes a consignment a security arrangement by requiring compliance with the provisions of Article 9 dealing with Secured Transactions.

Articles 4 and 5, dealing with Bank Collections and Letters of Credit, are somewhat up in the air. Some banks think that these provisions impose too great a liability on a bank performing almost a gratuitous and public service. Many bankers are seriously troubled about a section in Article 4 which in effect says that no bank can contract away its liability for failure to stop payment on an order of a depositor. Many deposit contracts provide that the bank when it receives a stop-payment order will use due diligence to carry it out but assumes no liability if it makes a mistake. The Code outlaws such provisions.

On the Article dealing with Documents of Title, both the warehouse and railroad people oppose confusion with each other. Further various provisions in the Code may impose a liability on railroads for acts of freight forwarders which have no connection with the railroads. It has been pointed out that the provisions in the Code relating to the Bills of Lading are in conflict with provisions in the Federal Bills of Lading law, and it would be impossible to operate under the Code provisions.

Now it is intended to introduce this Code in Congress, and I can only assume—and so far as I know, no one has yet said to the contrary—that the provisions in the Code, insofar as they relate to Bills of Lading, will supplant the Federal Bills of Lading statute. Apparently as far as one can gather from unofficial sources, the railroads would be very happy if left just as they are now; they are perfectly satisfied with their lot in life and do not relish the idea of a new code with the problems necessarily resulting from drastic change. Opposition from this source, if it develops, will be based on questions of policy which affect the commerce of the entire country; the life lines of our economy and defense and cannot be lightly ignored.

Article 9, as now drafted, insofar as we know, is in pretty good shape. It has received a thorough going over by the people interested in it. Since last December this Article has been almost completely re-written; but, this can be said about the Article, that of all the Articles in the Code this Article had a more definite and decided slant

to the left than any of the other Articles in the Code. At one time there was a provision in there that a secured lender, insofar as lending on an inventory was concerned, could only take one of two types of lien. He could take a specific lien in connection with specific and separately described items but on default under such a lien the lender could not get the benefit of any equity over and above the related collateral value on each separate item. The other kind of inventory lien that could be taken was a lien on a conglomerate mass, such as a pile of coal or cotton seeds in a warehouse; this was a general lien and on default the lender was under the obligation of giving all creditors notice, calling them in, securing the borrower's consent, then proceeding with liquidation of the lien with the obligation of a trustee. You can imagine what these provisions would have done. There just would be no inventory financing. Small business would suffer irreperable harm.

Another provision that was in Article 9 did not require filing of liens on consumer goods such as refrigerators, radios, automobiles, etc. While you did not have to file these liens the Code provided that the lender or the financier had absolutely no protection against a good faith purchaser from the one who had the commodity, and there was no way in which he could protect himself from such a good faith purchaser. Of course, it is one thing, as under our present law in every state, to say to a financing institution, "If you don't want to record, you don't have to; you assume the risk of legal loss voluntarily. We have a system by which you can record and protect yourself. The choice is up to you." It is quite another thing to say, as is said in the Code, "You don't have to record, but we are not going to portect you, and there is no way in which we are going to permit you to get protection against a good faith purchaser from your borrower." This earlier provision in the Code has fortunately been changed, but it took two years arguing to accomplish the change which as a matter of policy was so absolutely urgent.

I regret that in the short space of time that I have had the Spring 1951 Draft of the Code, I have been unable to give it the study needed to present more definite views or more concrete ideas than I have in this short while this afternoon. However, from what has heretofore gone on, I am convinced that this Code needs a more thorough combing.

As I said, the Code has been approved in principle. The Commissioners and Law Institute have reached the end of their rope. What are we lawyers to do with this project? I take the Code to be a challenge to the organized Bar; that is, if the Bar has any aspiration to leadership at all, and I am sure we have not forgotten that. I think this Code is a challenge to our effort, our ingenuity, our industry, to study it carefully and thoroughly and to be openly critical or commendatory concerning it as the case may be and under no circumstances should we take it blindly on faith.

This proposal for a new law is too tremendous a thing to brush off lightly or to enact it into law unduly. We should not hesitate to make suggesions of change if that seems desirable. Make your views

known to the sponsoring organizations, so that they have the benefit of your advice. They have need of help, and it would be a crime and a pity to have this work on which so much time, money, and effort has been spent, go completely to naught.

Thank you.

At the conclusion of the address President Witherspoon called for the report of the Committee on the Uniform Commercial Code. This report was given by Mr. David Welch, and may be found in Appendix A. After presenting this report, Mr. Welch moved its adoption, and this motion carried. The report of the Legislative Committee, submitted by its Chairman, Judge Julian P. Alexander, was then read by Mr. V. J. Brocato, and this report was duly adopted. This was followed by the report of the Complaint Commissioner, Mr. W. C. Sweatt. This report appears in Appendix A.

President Witherspoon then called upon Mr. Frank E. Everett, Jr., Chairman of the Law Journal Committee. After a few introductory remarks Mr. Everett presented Mr. Tom Crews, who submitted the report of the *Mississippi Law Journal.* This was followed by the report of the Insurance Committee, given by Mr. Ed L. Snow. At the conclusion of his report Mr. Snow moved its adoption and this motion carried. These reports may be found in Appendix A.

The report of the Study Committee was given by Mr. John C. Satterfield. This report, together with amendments, additions, and deletions made by vote of the Bar, may be found in Appendix A. At the conclusion of his report Mr. Satterfield moved that the report of the Committee, subject to amendments and deletions noted, be approved. This motion carried. Mr. Sidney Johnston, President of the Harrison County Bar Association, then gave a report on a minimum fee schedule. By vote of the Bar this matter was referred to the Study Committee for consideration.

The Junior Bar report was given by Mr. E. Cage Brewer, Jr. This report, together with recommendations made by the Junior Bar, appears in Appendix A. Mr. Brewer then made a motion that it is the concensus of the Mississippi State Bar that it favor laws which would legalize the sale of alcoholic liquors in the state. After a lengthy discussion this motion carried. Mr. Brewer's second motion, that the Bar shall implement the views so expressed with the idea in mind of sponsoring an educational program on the question involved with no expense to the Bar, was also carried.

The meeting adjourned.

At the annual banquet, which was held on the evening of June 1st, Mr. Henry Nichols, the featured speaker, delivered an address on "Default by Inertia". A resolution commending Gibson Witherspoon for his work in the past year as President was passed by acclamation.

SATURDAY, JUNE 2, 9:00 A.M.

The meeting was called to order by President Witherspoon, who then called for the report of the Taxation Committee. This report, which may be found in Appendix A, was given by the Chairman of the Committee, Mr. Tom C. Hannah. Attached to this report were the reports of the Sub-Committee of the Taxation Committee, of which Mr. Denton Gibbes was Chairman, and the report of the Sub-Committee on State Income and Inheritance Tax, of which Mr. Robert W. Hartford was Chairman.

At the conclusion of this report, President Witherspoon presented Mr. Stokes Robertson, who introduced Mr. William G. Cullen, Head of the Southwestern Division Technical Staff of the Bureau of Internal Revenue, United States Treasury Department. Mr. Cullen delivered an address on "Practice and Procedure before the Treasury Department".

President Witherspoon then presented Mr. Arlington Jones, who introduced Mr. Cecil Kilpatrick, of Washington, D. C., Chairman of the American Bar Section on Taxation. Mr. Kilpatrick spoke to the Bar concerning the various stages of review in the Bureau of Internal Revenue.

At the conclusion of this address the report of the Committee on Group Accident and Health Insurance, submitted by its Chairman, Mr. Henry Barksdale, was read by Mr. Shands. The plan recommeded by this Committee is, by vote of the Bar, to be submitted to the Bar on a referendum. The report of this Committee may be found in Appendix A.

Judge Lester Clark, Chairman of the Resolutions Committee, then read two resolutions, the first expressing the gratitude of the Bar to the Harrison County Bar Association, to the management of the Buena Vista Hotel, and to the Chairmen of the various committees, and the second expressing the gratification of the Bar at the attendance of the distinguished guests. These resolutions were adopted by the Bar. Judge Clark then read a resolution concerning the repeal of the Black Market Tax. After a discussion this resolution was amended by the Bar and then adopted as amended. The resolution, together with the amendment, may be found in Appendix B. The next resolution, adopted by the Bar, was to declare Mr. Russell A. Schoneberg an honorary member of the Bar.

President Witherspoon then presented Mr. George McClintock who introduced Mr. Melvin M. Belli, of San Francisco California, who is President of the National Association of Claimants and Compensation Attorneys. Mr. Belli delivered the following address:

DEMONSTRATIVE EVIDENCE AND THE ADEQUATE AWARD

Melvin M. Belli

It is a privilege to accept the gracious hospitality of your great Bar Association and to be able to appear in your beautiful state of Mississippi.

In the few minutes that I have been here you have already made me feel more than welcome. Your waiting over to hear my address on "The Adequate Award" and the size of your audience is a tribute to your search for justice, as you always have, in Mississippi.

I am not presumptive in indicating trial procedures tried and available in our own state of California and in other states. It is with a deep sense of humility and sincerity that I attempt to give you something at least provocative, which you may try here in keeping with your own customs, and which I hope will indicate more adequate awards to those who suffer the personal bankrupting catastrophe of the personal injury.

I am particularly pleased that there are gathered here able trial lawyers, both on the plaintiff's and on the defendant's side. The trial of a law suit is the portrayal of facts in the search of a justiciable award. Demonstrative evidence, the procedures that, in all humility, I give to you are as available to the defendant as they are to the plaintiff. If the plaintiff has no case, it is the duty of able defense counsel to show this to a jury as dramatically and as capably as possible. Plaintiff should not win his case if he is not entitled to an award.

If, however, facts cry out for compensation then it is incumbent upon plaintiff's counsel, by the use of demonstrative evidence, to convince a jury first, that the case is one of liability, and secondly, that the size of the award should be adequate. Consequently, I hope the procedures I outline will at least be considered, if not tried, by both the defendant's and the plaintiff's bar of your state.

We are a trial law office. While we participate in domestic relations cases, will contests and do general trial work, both civil and criminal, I am particularly interested when I am privileged to go into a courtroom representing the plaintiff in a personal injury case.

Ours is a noble profession. Those among us who specialize in the personal injury field are particularly privileged. A doctor may bind up the physical wounds after personal injury but it is only the plaintiff's lawyer in the personal injury case who rehabilitates economically the client, his widow, his children. Were it not for the personal injury lawyer, the state, the federal government, and the county hospitals would have to accept the burden of rehabilitation.

There is a fascination about the "damage suit lawyer". We make no apologies for calling ourselves "damage suit lawyers", "trial lawyers", "personal injury lawyers", or "plaintiff's lawyers." For a great lawyer once said, "Anyone who can successfully obtain verdicts in damage suits and have those verdicts sustained on appeal, is capable of entering any type of litigation." In our field, one encounters not only the human element, present in every law suit, but also employs all of the mechanics necessary to obtain a judgment, and to perfect that judgment to its ultimate conclusion.

I think one of the real reasons for this fascination lies not perhaps in those characteristics but rather in fortitude. Just plain, old-fashioned heart. One who is without heart, without ability to stand it when the going is rough, when he is in the trough of the sea, has

no right to enter this specialized field of law. Perhaps here more than in any other realm of the law one finds stout-hearted men and discovers the truth of the saying that "valor consists in the power of self-recovery".

How many of you have not walked out of a courtroom at the end of a day when the opposition, and perhaps the court, have all but thrown the chairs at you? Yet you came back the following day to overcome the obstacles of yesterday and to continue on to a successful verdict. Even though the court itself might have been against you, nevertheless when you obtained that verdict you had the court's respect and admiration. So, as I say, gentlemen, fortitude is a characteristic which has perhaps brought us together here in convention for the purpose of discussing our mutual problems.

Let us speak frankly. There are those among us who malign the "personal injury lawyer". On voir dire of a jury I often have the defendant sarcastically comment to the jury, "Do you know the plaintiff in this case is asking for *a money* judgment—dollars"? My reply, as I shall try to show you later on when we speak of the use of the blackboard, is that under our system of jurisprudence compensation can only be allowed in terms of *dollars*—money. I bring this home to the jury adequately and in direct reply on voir dire. As I shall show you later on, tears and laughter and pain can only be interpolated in the compensation of dollars—money.

We've no system of law presently that through an alchemy in the law books or the judge's wisdom or the jury's logic can man after personal injury be made whole again, can he walk without a limp, can he sleep without pain, or can he be given a judgment tantamount to an equity decree whereby an award is made that plaintiff be given so much a month, a house, a nurse, doctor and hospital bills. Money is a poor sbustitute for the catastrophe of personal injury, but this is our only judgment available.

If there is anything wrong with the plaintiff's bar in any particular state then seventy per cent of the law of that state is derelict. Why? Because seven out of every ten cases tried, seventy per cent of our cases, are personal injury cases! I further go so far to say that if your plaintiff's bar is derelict in any particular state then so is your defendant's bar.

It behooves the plaintiff's lawyer and the defendant's lawyer to sit at the same table, dispassionately to discuss their several problems and dispassionately to discuss with the insurance adjuster, the insurance company, and the claims men, the problems of coverage. In eighty per cent of the cases the true defendant is the insurance company. Eventually this will be expressed in all the states as it is done in Louisiana and Wisconsin and in many of the other states now where the insurance company is made the named defendant.

There has been no injustice wreaked in those states because of the naming of an insurance company as a defendant. As a matter of fact, in the states that I have named above, verdicts are lower than in most of our neighboring states! A jury will not penalize a defendant because that defendant is an insurance company or a corporate

capacity. I refer you on this subject to the remarks of the several United States Supreme Court Justices in *Wilkerson v. McCarthy*[1]

Trial by Jury

The American Bar Association has before Congress a bill at the present time to take all F.E.L.A. and put them under a commission, depriving the litigant of jury trial. Over fourteen years ago there was a bill before the New York Legislature to put all automobile cases under a commission, such as a Workmen's Compensation Commission.

I resent this trend to take cases away from juries and judges and put them under commissioners. If you lawyers are going to have to practice before commissions instead of judges then you judges, and I have been told that there are a number of your Supreme Court judges here today, and I am honored, you will eventually be addressed as Mr. Commissioner, instead of Your Honor. Your salary will depreciate in proportion to the loss of dignity of your title.

If you're going to take all personal injury cases and put them under commissions, then you're going to take seventy per cent of law, seven out of every ten cases, and do away with judges and jury trials!

Gentlemen, I think that we should pause here and consider the purport of this: One of the great institutions left in the world today is trial by jury. If I were to set up a democracy on a desert island never before visited by jurists I would first demand that there be: (1) the writ of habeas corpus so that I could avail myself of the right of being tried before an impartial tribunal, and (2) the right of jury trials so that the tribunal would be impartial. Give me these two institutions and I will assure you a democracy. Take away these two institutions, or either of them and I will show you a government (we desecrate the name "government" by associating it) such as the Soviet.

Let me preface here preliminarily before giving you the workable tools of demonstrative evidence, two of the greatest attributes of the trial lawyer: (1) *sincerity,* (2) *humility.* Of course, a trial lawyer can't go into court unless he has a good case or a thoroughly prepared one. Your case must be prepared to the utmost so that when you go into court, trial procedure becomes a *race of disclosure* to get the facts to the jury. The old idea of surprise witnesses, the dramatic pulling the rabbit out of the hat, just isn't done any more before an American judge and an American jury.

No doubt most or all of you have read the stories of Fallon and Rogers and other great criminal lawyers of days gone by, when you were in law school. You won't get by with the procedures they used any more. Our juries, which means our citizenry, have become learned in separating fact from fancy. While it is true they demand demonstrative evidence in order to be persuated, nevertheless your demonstrative evidence must be based upon facts and logic.

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[1]336 U.S. 53 (1949).

The Brochure

I speak of preparation. I want particularly the defendant's men here today to hear this. I tell you of a procedure we have been advocating in N.A.C.C.A. for some time. I have used it personally with considerable success on the coast and with a sense of accomplishment —the use of the brochure. I have my investigator marshal all of the facts of a case, but before he does it, I make my own investigation and I make it personally. If pictures are to be taken, I go out and set up the camera angles; if witnesses are to be seen I want to see that witness and determine his personality before he gets on the stand.

When the complaint is drawn, we have all the facts available in our file. Our complaints are very short, not over a page and a half. If it is a case calling for exemplary damages, we have those facts available.[2]

We like to file our complaint as soon after the case comes into our office as possible. This moves us up to the trial date as rapidly as we can. With the filing of the complaint, we file deposition papers. We take the deposition papers. We take the deposition of every available witness, both adverse and friendly, as well as the actual parties. We want the actual facts. We want them in writing. We don't depend on surprise witnesses.

Once we have all of the facts in our file, all of the depositions, statements from all witnesses, all pictures of the client, his injuries, the scene of the accident, etc., we make up a brochure. Into this brochure we put our trial brief on the law. We then go over to the defendant or the insurance company or the claims man and we set this brochure down on his desk and tell him, "Look, here's our case, here are all the facts, here's our special damages, and we have every one itemized, here's our future damages, here's our doctors' reports, here's our demand on this case, and you can make notes from this brochure and tell your home office what we've got."

Defendant doesn't want to go out and take a beating in a case that he knows he is going to lose. He'll become your advocate in trying to sell your case for you to his principal, the insurance company. This brochure method is a recommended procedure. Compensation then is based upon facts of liability and damage, not speculation.

More cases should be settled. However, if the defendant will not pay you what you in your mind think is an adequate award, then you, yourself, must determine to try that case, and you must convince your client that the case should be tried.

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[2]I suggest for your consideration the plea of punative or exemplary damages. It is not necessary to show willfulness; mere wantonness is sufficient. Exemplary damages entitle you to: (1) examine the defendant on his wealth; (2) contributory negligence is no defense; (3) defendant cannot admit his liability and thereby foreclose you from showing the facts of the accident; and (4) a discharge in bankruptcy is unavailable where there is a wanton or willful tort. See Donnelly v. Southern Pacific Co., 18 Cal.2d 863, 118 P.2d 465 (1941), where plaintiff plead wantonness instead of willfulness, the policy is then not concealed but exemplary damages lie. See also Ross v. Clark, 35 Ariz. 60, 274 Pac. 639 (1929), where mere drunken driving warranted exemplary damages.

If we have a case involving plastic surgery, we take colored pictures because colored pictures only will show the burns, kleoid formations, and the results of the surgery. Colored pictures only will give the facts; black and white will not. You can't tell on a black and white picture whether it is dirt, grease, or a burn. In our plastic surgery cases, we take pictures at the various stages of the operation, from the time of the original injury up until the time of trial . These sequential pictures appear in our brochure. They indicate to the defendant and the jury if necessary, the number of operations, the amount of the surgery, the pain and suffering and they indicate the end result too. You can't hide the end result. It is a factual thing. Better have it in your own file than have defendant bring it out against you by showing the end result, a perfect job of plastic surgey, without your showing the pain and suffering the plaintiff went through to get that "perfect result". My friend, Perry Nichols, down in Miami, Florida used this procedure the other day to settle an electric burn case for $200,000. This was settlement, gentlemen, not trial.

I have found insurance companies reasonable when they are confronted with facts. We are not concerned whether it is an altruistic reasonableness or a forced reasonableness. Of course you do have the problem of "reasonableness" or "adequacy" of award, depending upon the standard of your state. I say your plaintiff's laywers, your defendant's lawyers and your judges must be educated, and I say this with all due respect and not presumptively, as to what an adequate award is. To educate, you must appreciate the awards that are given in other states. There is nothing in your industry, your commerce, your labor or your social relations that should make your state any more backward than any other state. You would take issue with me if I called you a backward state. However, I say one of the tests of a backward state is the adequacy of award to your injured people and until you give the injured adequate compensation as compared with other states you are backward. I give you this in challenge: Your backwardness can be measured by comparing some of the awards given in Mississippi with the awards given elsewhere . They are niggerdly. They are unfair. They do not become you.

Some of you plaintiff's men may say, "Well, suppose we have given all of this information in the brochure to the defendant and then he won't settle the case—he knows everything we've got and we are at a disadvanatge when we come to trial". I say to you that the defendant generally knows what you have anyhow, you are going to have to put your case on first, facts cannot change, and once you have marshalled your facts by thorough preparation and prepared them so that they are in a brochure, then you're going to get all that information over to the jury with a ring of sincerity. Again I use the expression, a jury trial today is a *race of disclosure.*

That which you have in your briefcase, if undisclosed to the trier of the facts, isn't going to be reflected in your award. A jury can become impatient. You may be able to keep them interested for several hours or for half a day, but if you haven't anything to tell them they're going to lose interest in your presentation and your client is going to lose not only interest but the principal as well. I can only

tell you in my own practice that I have never been afraid to open my file by way of the use of the brochure in any case in which the facts demand a plaintiff's verdict and an adequate award.

The Burden of Proof

Your chairman graciously embarrassed me, I am frank to admit, in the manner a trial man likes to be embarrassed, by recounting some of the cases I have tried, cases in which verdicts were awarded my clients of $115,000, $125,000, $200,000 and $225,000. I think we've achieved awards for our clients in over ten separate cases where the verdict of settlements were over $100,000.

I recall settling one without going to trial for $128,000 in a malpractice case, a case involving paralysis after an ineptly administered caudal anesthesia.

I mention these cases to you in all humility. I make this remark in all sincerity. I do not believe these awards were adequate. They are not adequate when compared with the cost of other commodities today. I refer you to the article I recently did in the *California Law Review* entitled "The Adequate Award".[3] You will find this study most provocative.

These cases which your chairman mentioned were tried in from three to five days. I don't think that any of them went over five days.

Before we go to court we set the *atmosphere of the case*. Each case has to be tried in its own particular fashion depending upon the personality of the plaintiff, of the defendant, or the witnesses, and the facts of the case. You make your own courtroom atmosphere. You become master of the situation if you have prepared thoroughly beforehand and know the manner in which you are going to try that case.

If you are on the plaintiff's side you must never forget that you have the burden of proof. Burden of proof is a very real thing. It means, in trial procedure, that if you have a lull or a laxity of presentation in the plaintiff's case that you are not carrying your burden of proof. For the plaintiff, you must lead, you must carry your action, carry your facts most dramatically, carry your burden of proof throughout the entire trial from the opening statement through the examination and the closing argument to the judge's charge, so that you have made the jurors your advocates when they come to the all-important time of going into the jury room to deliberate. If you have presented your case dramatically, if you have used demonstrative evidence so that the impact of a fact impels a juror to become an advocate for you in the jury room, then you have co-counsel continuing your burden of proof where you're not privileged further to speak, to-wit; in the jury room. One juror will pick up one point, another, another point and a third another point. We have twelve jurors because a verict reflects their collective justice. A verdict reflects their collective preception. This is the justice of the jury system. Vagaries and caprices

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[3] 39 Calif. L. Rev. 1 (1951).

and whims of prejudice and speculations are winnowed in collective thought achieved by frank deliberation in the sanctity of the jury room.

The burden of proof is not an idle figure of speech or an academic expression intoned by a judge in his charge. Burden of proof means you are, as the plaintiff, asking that something be taken away from the defendant and given to the plaintiff. You have the burden of proof to make the jury want to feel that you are taking anything away from the defendant, you are actually compensating plaintiff for that which has been taken from him.

At the end of the trial the judge will instruct that the burden of proof is upon the plaintiff. The judge will instruct that, "if the scales of proof hang evenly then the verdict must in law go against the side having the burden of proof." I find this a devastating instruction to an inadequately prepared case. It is a refuge for the searching mind of the confused juror. Confusion comes with failure to disclose. Failure to disclose means you have lost your race of disclosure. (The defense plea of "unavoidable accident" of which I wish I had more time to speak, is another refuge for the confused juror. It is an unfair defense because it is merely another manner of stating a general denial, emphasizing it unfairly, making a juror believe it is something else when in law and in fact it is not.)

So let me leave this thought in concluding this phase, that burden of proof is a very real thing; consider it as synonymous with the race of disclosure which you must win to achieve an award. I will show you, I hope, later, when we go to the blackboard, that we start our race of disclosure with our opening statement. I will exemplify, when showing you how we make our opening statement, that everything we have in our briefcase is disclosed on the blackboard—is given to the jury at the very beginning of the law suit.

The Doctor

In looking over my notes here, and I only wish I had five hours to speak to you instead of two, I find a delightful excerpt from an actual deposition that some of my friends sent me from Oklahoma the other day. It is supposed to tell how a client knows an insurance company doctor:

"Q. (To the plaintiff client) You didn't even learn his name?

"A. No, sir, I didn't even learn it. I didn't even know his name. I don't know his name at all.

"Q. Well, how then did you know he was an insurance company doctor?

"A. Well, I just judged he was the insurance doctor, just the way he handled me. He never gimme a damn thing. He just come in, looked at me. He said 'How you feeling?'. Well, I told him my hip was about ready to kill me, and he said, 'Well, you can go home in a day or two'. And, hell, he never gimme a drop of medicine or nothin'. The son of a bitch wanted me to die. That's the reason I figured out he was the insurance company doctor."

Gentlemen, it's not quite as bad as that. However, I am amazed to see in some of our sister states that so-called respectable doctors just won't go into court on behalf of the plaintiff. They are willing to get out of their bed at night for emergency operations but you just can't get them out of their offices in the middle of the day to testify on behalf of the plaintiff. Plaintiff's men have to explain the facts of law and life to these doctors. Of course, doctors have to be put on the stand when they come into court and not kept waiting. An interview with the doctor before trial is necessary so that neither they nor the lawyer examining them will look foolish because of inadequate preparation.

You must always appreciate that the end result of every personal injury case necessarily is the evaluation by a doctor of pain and suffering and permanency of disability. Do you realize that you can't try a personal injury case without a doctor? If doctors refuse to testify, they stultify our law which entitles everyone in this country to an adequate award. Our great sister profession does not intend this. It is a failure of appreciation on the part of doctors to understand the function of the personal injury case and to appreciate the human dignity belonging to the damage suit lawyer.

Here may I say if you let the layman believe that there is something wrong with personal injury law, if you on the defense side use the term "ambulance chaser", you blaspheme seventy per cent of the cases that go into court and you blaspheme seventy per cent of all law and of all lawyers! Personal injury law is one of the most dignified callings a young lawyer can choose. I believe here he has the opportunity of the greatest service to his fellow man when he practices this specialty as it should be practiced.

An Adequate Award

The most personal, miserable thing that can happen to a human being is the personal injury. The wrongful death case is the supreme personal injury.

The successful advocate must have sincerity. Not only in the specific case that he tries but in his entire makeup. To achieve a "big" verdict you must sincerely believe in your cause yourself. I don't like the term "big verdicts." They should be called verdicts "approaching adequacy." Even some of the verdicts your chairman mentioned that I have achieved in California only approach adequacy measured in the now purchasing power of the dollar.

We have not yet achieved even a meagre appreciation of the dignity of man's mind, his members, his life, as reflected in our jury awards and appellate decisions.

In a 1902 Canadian case[4] $4,000 was held to be excessive for the loss of a right leg; $2,000 was ordered to be remitted! In 1870 a verdict of $18,000 was held to be excessive for the loss of a brakeman's

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[4]Myers v. Sault Ste. Marie Co., 3 Ont. L.R. 600, 33 Can .Sup. Ct. 23 (1902).

two legs in Illinois.[5] In Indiana in 1896 a verdict of $1,100 was held adequate for the loss of a right leg to a seven year old girl![6] In 1911, in an Arkansas case,[7] a verdict of $10,000 was ordered reduced to $5,000. Both legs were amputated! I recall in *The William Branfoot*[8] that a plaintiff stevedore, thirty years of age, suffered a comminuted fracture of his leg which necessitated an amputation below the knee. The trial judge allowed $500 for his suffering and $1,786 for his loss of future earning capacity. The judge said, "We can compensate him for his pain. Following Mr. Justice Bradley in *Miller v. The W. G. Hewes*[9] . . . I allow him $500. His disability is for life, but *for life only.*"[10] (Emphasis added.)

Do you realize that in half of the states of the United States the largest verdict that has ever been returned since the beginning of the jurisprudence of that state is not as adequate as a top baseball player's salary for one year—$60,000? Man has built a complex material world. His airplanes, the racehorses he has trained, his pleasure yachts, the commodities he sells, paintings he achieves, the music he writes, the prices for them are far in excess of the price that he has placed upon his own human life, his mind, his personality, the loss of his legs, his eyesight!

It is an incongrous thing to me that a man flying in an airplane from Chicago to San Francisco can insure his life with an insurance company for half a million dollars. The insurance company computes an individual life as a readily ascertainable commodity. The insurance company will pay half a million dollars if this man loses his life. Yet, gentlemen, if that man lost his life in an airplane accident, the airplane falling in Colorado, the legislature of that state has placed a $5000 limit on the value of that man's life (suit by wrongful death) regardless of his place in society, his earning capacity, the number of dependents he leaves to grieve him, or the negligence of the defendant! To me this is a brutal anomaly in our economic, I dare not affront you lawyers by saying our legal, system. If the airplane fell in Utah, Nevada, or California, the verdict would be unlimited. (We've recently gone to $100,000 in our wrongful death awards. $300,000 was awarded in New York recently.)

The highest verdict that has ever been sustained in Oregon is $32,000. Yet the price of bread, of milk, of butter, of gasoline, is the same in Oregon as in California. A geographical difference of a state boundary gives the disproportionate result of awards returned at $32,000 in one state and at $225,000 in the adjacent one! Certainly the threshold of pain is as high in Oregon, the value of human life should be as great, tears and pain as brutal and laughter as gay in Oregon as it is in California. Yet the appellate courts of Oregon, and I say this with all the respect it deserves, have flatly refused to affirm any

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[5]Chicago R.R. Co. v. Jackson, 55 Ill. 492, 8 Am. Rep. 661 (1870).
[6]Berry v. Lake Erie Co., 72 Fed. 488 (C.C.D. Ind. 1876).
[7]St. Louis R.R. v. Hesterly, 98 Ark. 240, 135 S.W. 874 (1911).
[8]48 Fed. 914 (D.C.S.C. 1892).
[9]1 Woods 363, 17 Fed. Cas. 362 (1870).
[10]See Belli, *The Adequate Award,* 39 CALIF. L. REV. 1 (1951), for other examples of "adequacy".

verdict over $32,000. (This may be the fault perhaps of the Oregon lawyer in startling his appellate judges with absolute figures, rather than breaking down pain and suffering into minute amounts, dollars and cents, for minute periods of time, which procedure I shall show you later on the blackboard.) In California our highest and most adequate award, and I humbly apologize for the word "highest", is $225,000. This was in my *Reckenbiel* case[11] of which your chairman spoke.

How does an appellate judge presented with a novel award, the highest theretofore in his state, evaluate it ? How does he turn human suffering into dollars and cents in the personal injury case? He is able to do so if you, as plaintiff's men, portray to him in minute detail, through your transcript, a breakdown of what pain and suffering is interpreted into dollars and cents, what special damages are, and permanency of injury.

I give you an appreciation by a great and humble mind of one of your Southern judges of the evaluation of pain and suffering of a fellow human being. This Judge Terrell in *Florida Power and Light Company v. Hargrove*[12] in which he sustained an award of $50,000:

> "The verdict in a case like this is at best a feeble attempt to place the injured person back in the shoes he wore before the injury. In many cases, as in this one, it cannot be done. If it were possible to do so, none of us would be willing to step into the appellee's shoes and take his judgment with his handicap on condition that he step into our shoes as physically normal as we are. *The elements that enter into a judgment like this are so diverse that it often requires more of humility than it does of law properly to assess them. The Judge who overlooks the fact that the lineman, the yardman, the plumber and the cook are made of the same common clay that he is, is not equipped so to do.*" (Emphasis added.)

May I refer to one of our own great trial jurists on the West Coast. I refer to Judge Mathes, in *Maxey v. Southern Pacific Co.*[13]

The award was $165,000. Two legs were amputated above the knee. Judge Mathes said:

> "Assuming that Maxey, instead of being a railroad worker, was a bum. He is one of those thousands of human beings who are sort of peculiar, at least to the rest of us they are peculiar—perhaps we are peculiar to them—who do not work. They just walk up and down the highways and the railroad tracks—wanderers, hoboes. He comes into court. His legs have been cut off through the negligence of the defendant. He says 'My legs are cut off. I want to be a hobo the rest of my life with my legs on. I enjoy it. I have no earning power. All I do is live!' "

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[11]Super. Ct., S. F., Cal., No. 366675.
[12]160 Fla. 405, 35 So.2d 1 (1948).
[13]U.S. Dist. Ct., N.D. Cal., No. 28771H (1949).

Gentlemen, all we do is live. We are guaranteed by the instrument, of which we have heard so little so lately, the United States Constitution, the right to live out our lives with our right of privacy and the pursuit of happiness—*free from pain and suffering.* It is the privilege and duty of the personal injury lawyer to project into reality the beautiful academic sentiments expressed in that document.

Now let me tell you some of the mechanics in trying a jury case. The things I portray for you here today are not done in any sense of histronics or showmanship. If you try your case for show alone, if you lose your sincerity and your sense of humility, you have lost your case by noon of the first day. The sincerity, the humility of a trial lawyer is one of the great things in our democracy. It is one of the things that I hate to see pass.

You plaintiff's lawyers, you who have been given gifts of logic, of ability of portrayal, of analysis, have been given those gifts in trust *for a limited time to deploy* for your clients. You must be *humble* and *sincere* in their use when you go into the courtroom representing the widow, the children, the incapacitated worker, the man on the stetcher who has lost all function of the lower part of his body, who must be catherterized every two hours, whose bowels must be mechanically operated in order to sustain life, you must be humble in the employment of those gifts which have been given to you in trust and you must be sincere in their employment.

Several months ago I spoke in Wisconsin. I think the most adequate award sustained in that state is $60,000. In that case, on appeal, the appellate justices said it was an "adequate award" and not excessive because, mind you, and they put it down in black and white, inside of *eight years* this man's hospital, doctor and nurses bills would have used up the $60,000! Yet this man, according to the probabilities of life expectancy tables, would live 20-25 years! What kind of a yardstick do we permit our judges to use in the appellate courts? If it were the loss of a factory, if a factory burned down, the verdict would be dollar for dollar in the capital loss. If an automobile bumped into another automobile and the automobile was damaged $200, the verdict would be $200 not $206, not $199! Yet we have our appellate courts saying: "there is no readily ascertainable yardstick for pain and suffering, but we have the 'feeling' that the verdict is 'too high.' "

We cannot blame our judges entirely for this. Our judges are lawyers. Our judges are as sincere as our lawyers. I feel that it is the fault of the bar in not educating the trial and the appellate judges to the adequate award. It is a failure to achieve the use of demonstrative evidence. The failure to portray facts. We must realize that amongst all the professions perhaps we are more loath than any to change to accept novelty. We have been trained in *stare decisis.* The dead hand of the past rules us perhaps more than in any profession. You are all familiar with the story of the obstetrical forceps, how for years the new procedure was sacrosanct to a select few in medicines. Let this not be the case in law.

If we have achieved something in demonstrative evidence whereby adequate awards are guaranteed, this procedure should be available

to every injured person through every adequate lawyer throughout the United States. I feel that too many lawyers lack the courage, the sincerity, the humility, to go before a judge and jury and put on the blackboard and show actually what a case is worth, in dollars and cents, and to ask for an adequate award even though it may be three times higher than any award theretofore handed down and affirmed in that particular jurisdiction.

I spoke of humility. I give you an example. I have the privilege of being President of the National Association of Claimants and Compensation Attorneys. There are about 1500 of us in all states of the Union. Never before has there been a "lobby" for the injured person. There have been many lobbies on the defense side. There is now a lobby for the injured. This is a courageous lobby. This is a lobby impelled by sincerity of the adequate award. If there is any apology to be made it is the apology that we are fifty years too late. And to you defendant's men I say raise the standards of the plaintiff's side and you will raise necessarily those on your own side.

Humility. I remember trying the *Reckenbiel* case. Captain Reckenbiel could not be brought into court. He was incarcerated in an insane asylum. He had one of the most complete traumatic psychoses I have ever seen. I had to be Captain Reckenbiel in the courtroom. During the entire trial I had someone from my office sit in the front row and remind me after each examination upon each recess that I was not a wise-cracking or a brilliant lawyer, I was Captain Reckenbiel. This was Captain Reckenbiel's only day in court to achieve an award for his family for the rest of their lives.

After the case was over I so transposed myself for Captain Reckenbiel that when the jury came back they paid me the highest tribute I had ever had. They ignored me completely, walked right by be—some of them were in tears—walked over to the family sitting in the courtroom. I felt in that case I had done the most humble and sincere job I had ever done. My reward was in the adequacy of that verdict, not in any praise of the jury coming to me and shaking my hand and saying that it was the highest verdict that had ever been given. The verdict was the adequate award for the family. I made that jury feel that the award had to be adequate for *that* family, I showed them what that man had suffered, what he would suffer, I made them feel that what they gave to him would have to be for the rest of his life in his only day in court.

To the younger members of your bar, I say that our specialty, the personal injury law, should be, and is, one of the most dignified callings in a great profession. Recently I went through Italy, Spain, and France and I saw for myself, in all due respect to these impoverished countries, that there is a decadence of the legal profession. Politically, the one thing that has kept England from going Communistic is its respect for law and order, its respect for the judge, its respect for lawyers. I am sorry to report my conclusion that in England there is a greater respect for the lawyer than there is in this great country. That is why I tell you gentlemen if I were on the defend-

ant's side, I would cast no aspersions on the plaintiff's profession to malign seventy per cent of law.

Again to the younger members of the bar: You have read of the great cases in our jurisprudence, the landmarks in our law. These cases didn't come into the lawyers' offices with signs on the clients' backs, saying, "I am the *Dartmouth College* case", "I am *Pennoyer v. Neff*", "I am *Marbury v. Madison*", "I am *Buick v. McPherson*". These cases will come into your office only as humble human beings, perhaps some of them in overalls, some of them stumbling, some of them incoherent, some of them available for adequate expression. These men will be great cases only as you are able to interpret their human rights to legal remedies before a jury as a plaintiff's lawyer.

I remember Charley Simon. He sat in my reception room one day, a physically filthy repulsive individual, a man with a record of sex degeneracy, a man with a hair lip and a defect in speech. I took him into my office, I took his full history, I prepared his case adequately. He had a cause of action. Nature was unkind to him. Emerson would have told me the law should have compensated. The trial judge non-suited me for the first time in my life. I reversed him—not the first time in his life. That case has become one of the great landmarks in California law: *Simon v. City and County*.[14]

Sometimes it takes more courage to turn a case down than to take one. If you take a case, take it completely. Accord your client the benefit of full discussion and case history. Talk to his doctors and if you are not satisfied that his doctors have given you an adequate description of the injury and a fair prognosis, then it is your duty to call in as many specialists as is necessary and have them consult with the client and his other doctors. You, not the doctors, must collate and evaluate their opinions.

I remember Hedwig Bjarnsen. She was in a Greyhound bus accident. She was sent to me by another lawyer. I evaluated the case, and then violated one of the precepts of a good trial man. I did not take enough time with her. She complained of headaches. I checked her record with her doctor. The doctor was as negligent as I. He did not accord her a full physical examination. (Sometimes I think that we should have in all of our law schools a course in medicine. How is the young lawyer just out of law school able to cope with a trained insurance man who appreciates as much of medicine as does the doctor in evaluating prognosis of trauma. I refer you to Dr. Hubert Smith at the University of Tulane, who is giving the courses in medical jurisprudence, and I hope that sometime before long these courses will be emulated in all law schools throughout the land.)

I evaluated Miss Bjarnsen's claim at $4500. I said, "You are crazy if you don't accept it." She said, "I am not going to accept it." Miss Bjarnsen went out of the office, went to the lawyer who sent her to me, and asked to be referred to other lawyers. Several of them

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[14]79 Cal. App.2d 590, 180 P.2d 393 (1947).

took her history; she eventually came back to me. The next time she came back she told me that she had seen snakes in the water of the bathtub, that she was being poisoned, and she felt she was going to be killed. I then took a full case history and sent her to two psychiatrists. The report was that she had a full blown traumatic psychosis, and this turned out to be one of the few cases in which I have seen electric shock administered successfully on a traumatic psychosis patient.

Eventually I settled that case, without trial, for $72,000! Appreciate what would have been on my conscience for the rest of my life had I settled it for $4500!

Now let's talk about demonstrative evidence—the surgery of the law suit. These procedures are available for both plaintiff and defendant.

When I first started giving these lectures, I was asked, "This is all on the plaintiff's side, isn't it?" It's not all on the plaintiff's side. If you have a case where the facts show no liability, then you as the defendant, have the duty of using demonstrative evidence—aerial photos, maps, colored pictures, moving pictures, diagrams, medical exhibits—to portray no liability.[15]

The Jeffers Case[16]

To illustrate demonstrative evidence, I refer you to a case I tried against our Municipal Railway: Catherine Jeffers had suffered the traumatic amputation of her right limb below the knee as she was getting off a streetcar on Market Street at its regular stopping point in San Francisco. Those of you who have been to San Francisco will recall that there are four streetcar tracks on Market Street, two going to the Ferry Building, two outgoing.

At the first trial, the verdict was $65,000. At the first trial I employed all of my ability as a trial man, all of my attributes of sincerity and humility. I failed to use one thing. I didn't use *demonstrative evidence.* Perhaps I should say I did not use imagination. Imagination to me in the courtroom is merely another way of saying I did not think the case through clearly enough so that I could portray to others in the most dramatic fashion what was so obvious to me. I failed to realize that I was trained in the courtroom, I went to law school and had become a specialist, that jurors are chosen because they know nothing of law, know nothing of the procedure of the courtroom, nothing of medicines, and they are mystified as much as they are frightened at the thought of "going to law".

On motion for new trial, excessiveness of verdict, the trial judge set the verdict of $65,000 for a lost limb aside.

I reset the case for trial before another judge and another jury.

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[15] See 20 Am. Jur., Evidence § 716.

[16] Catherine Jeffers v. City and County of San Francisco, Super. Ct., S.F., Cal., No. 343965 (1946).

On the next trial, the verdict was $100,000, and there was another motion for excessive damages. This time the verdict of $100,000 was sustained.

Why the difference? On the second trial I employed demonstrative evidence and I convinced both jury *and* judge, and gentlemen, it is important that you convince your trial judge and talk to your trial judge, because don't forget, he is the thirteenth juror, and he is the juror that singly carries as much weight as the other twelve collectively with appellate justices!

The first trial judge in my *Jeffers* case had never seen an artificial limb. When I came into court on the second trial it occurred to me, "I am asking this jury to give my client something. I must show them, if possible, just exactly what it is. I can't show them an intangible commodity: pain and suffering and tears."

As if to emphasize my thoughts, defendant's counsel had commented to me that he was going to prove that science has now progressed to the point that an amputee can be fitted with a prosthesis which is just as good as the amputated limb the Lord had given him. I could hear counsel arguing that amputees now drive cars, play bridge, dance, swim, eat, tie neckties, and do practically everything that a man with a normal limb can do, provided they are fitted with a prosthesis. This is exactly the argument that the City Attorney made. I saw the jury impressed by this argument.

On the first day of trial, at the time of the opening argument, I had brought into court a large object wrapped in yellow butcher paper. I placed this down on the counsel table and left it there during the entire trial. Of course, the jury, the judge, and opposing counsel were curious. I moved it from the side of the table to the back of the table to the front of the table, close to the jury. I picked it up and put it on one of the seats in the courtroom, but I never unwrapped it.

When it came time for me to argue the case, I took the object in the paper before the jury box. It took me about five minutes to unwrap it. When I did, I said, "This is what this young girl is going to have to wear for the rest of her life—this artificial limb. this marvelous scientific invention. You have seen the metal and the harness and the strapping and the brutality of an artificial limb no matter how adeptly made.

I took the artificial limb and I asked Number One Juror to handle it and then to pass it among the other jurors. I asked them to "feel the fine texture of the flesh, to feel the warm blood coursing through the veins, to move the noiseless joints, to compare them with the articulating parts of their own knees." I told them here was this great piece of scientific achievement my friend had spoken of and which anyone would gladly substitute for their own limb.

The jury passed the member from juror to juror. All this time my plaintiff sat in the courtroom in plain view with only one natural leg! It took about a half an hour for them to pass it about. I could see the verdict sealed in the looks on their faces as this limb was being

passed around. Gentlemen, the jury was convinced; the trial judge was convinced. The jury was out thirty minutes!

This use of demonstrative evidence was available to any lawyer who tried this case. I was derelict in not presenting it during the first trial. Gentlemen, there was nothing of histrionics in using this. There was certainly dereliction of duty in not using it during the first trial—in not showing actually what I was asking damages for.[17]

This portrayal of actual demonstrative evidence before a jury (as in the *Jeffers* case), is available in any type of case. As I speak to you I can assure myself that in your own minds you are now thinking of cases which you have tried or which you are about to try in which you too may present just as vividly the elements of liability and damage to a jury.

Demonstrative Evidence on the Question of Liability

In the *Reckenbiel* case, Captain Reckenbiel was riding on a fire truck, an emergency vehicle. I presume your law is similar to ours, that any emergency vehicle has the right of way, even through a red light, the indicia of emergency are evidenced, the siren being blown. This was an intersection accident, there was an actual fire, the truck was blowing the siren, it went through the red light.

In my own mind I was positive the siren had been blowing. Another vehicle came into the intersection, going with the green light and rammed the fire truck throwing Reckenbiel therefrom, causing him the severe personal injuries which put him in the asylum.

I had the burden of proof, of course, to show that the siren had been blowing. Once I showed this I had the right of way, there was a complete liability; it was only a question of damages.

One evening as I was riding home in my own automobile I happened to go across an intersection at Geary and Van Ness Avenue. I was abstracted, thinking of some case that I was trying. I got out into the intersection, the green light was with me. Fortunately I slammed on my brakes just as a fire engine sped by in front of me—with its siren blowing. I hadn't heard it!

When I recovered from my fright I had a second one. If I hadn't heard the siren in my own case, how about my jurors who might feel that the siren hadn't been blowing loud enough in the Reckenbiel case, was about to try or they might have had the same experience as I.

Don't forget that the jury is made up of all different types of people, all races, all minds, all emotions, all prejudice. Perhaps one juror may doubt on liability. His doubt is carried over when he comes

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[17]I should not go so far as to cite as authority the Supreme Court of Tennessee, which in Ferguson v. Moore, 98 Tenn. 342, 39 S.W. 341 (1897), on an argument that the plaintiff's lawyer was guilty of inflaming the jury when he cried to them, said: "Perhaps no two counsel observe the same rules in presenting their cases to the jury. Tears have always been considered legitimate arguments before a jury. It would appear to be one of the natural rights of counsel which no court or constitution could take away. Indeed, if counsel has them at command, it may be seriously questioned whether it is not his professional duty to shed them whenever proper occasion arises."

to assess damages if the majority of the jury can swing him over on liability.

I had to portray to that jury that the siren was blowing, as I knew it was blowing. So I got an airplane, got above the intersection and took aerial photos of the entire area. I blew these pictures up until they were at least ten by ten feet. On this picture that I show you, you see the intersection. I put the pilot and the cameraman on the stand and I had them testify as to the elevation that the picture was taken, the visibility, the type of lens used, and had them qualify the picture as a true and correct depiction of the area at which the accident happened. And, let me say this, that you may vary this procedure by taking pictures from the tops of buildings and you will get as diagramatic a picture as any diagram that any artist can draw. Furthermore, you will get a clearer picture because the witnesses won't be confused. When we take smaller pictures we have fifteen copies made, one for *each of the jurors* so that they can look at the picture while the witness is testifying, one for the trial judge, one to offer into evidence, one to show the witness.

With a picture like this it is not necessary to explain to the witness that "one inch on the diagram equals fifty feet on the ground, etc., etc." The witness can find himself by looking at the picture. You are *dispelling* confusion, *not creating* it. If you are doing anything dramatic, it is the drama of factual portrayal.

In the *Reckenbiel* case I had thirty-five witnesses who had heard the siren blowing. Had I overlooked the value of demonstrative evidence I would have put these witnesses on one after another. I would have asked Mr. Jones, "Where do you live", he would have answered "I live at 51 B Street, I heard the siren blowing at 9:10 in the morning." Then I would have put on the next witness. He would have testfiied that he lived at 61 A Street, that he heard the siren blowing at the same time, and after I had put on three or four of these witnesses, the Judge would have called for the rule of cumulative proof and asked me how many more witnesses I had. I would not have impelled that jury to decision and carried my burden of proof by portraying to all of the available senses of perception, those of *seeing* as well as *hearing.*

What I did was to introduce the large diagram, then I brought my witnesses, all thirty five of them, one after another to the stand. I asked each witness his name, I asked him to go to the picture and show me where he lived on the day of the accident. He put his finger on the picture and while he held it there I took a piece of paper with his name and pasted it on his house. He then testified that he was living at *that* house at *that* time and that he *heard the siren blowing.*

The judge allowed me to call each of the thirty-five witnesses and when I was through I had *thirty-five pieces of paper pasted upon the aerial photo.* When those thirty-five pieces of paper were pasted upon that aerial photo, they extended out from the intersection as much as a half a mile away. You could draw rings connecting the witnesses who lived at the perimeter and you could draw rings connecting the witnesses who were right at the intersection.

After the thirty-five witnesses had testified, it appeared that there

were concentric rings around the intersection and I argued, I doubt if argument was necessary, that here was an actual *zone of sound* through which the defendant's vehicle forced its way to make the accident. If all of these witnesses, these thirty-five witnesses who lived as they showed they lived in the picture, had heard this fire truck and had heard it so far away from the intersection, certainly the defendant, right up at the intersection should have heard it and he was negligent in pushing through the zone of sound to get to the accident.

Of course, we photographed the picture with all of the witnesses' names on it and then "unblew" the picture so that it was of minimum size that it would fit into the brief on appeal and that the justices on the appellate bench could see for themselves the zones of sound that so impressed the jury.

In demonstrative evidence we attempt to *dispel* confusion and doubt. Why? Because on the plaintiff's side, again, we have to carry the burden of proof.

Further, on demonstrative evidence, in the *Reckenbiel* case, plaintiff was in an asylum. Defendant's doctors testified that Reckenbiel would be out of the asylum as soon as the case was determined! (The case is now over a year and a half old. Reckenbiel is still in the same asylum, his psychosis progressing!)

The doctors who testified for defendant that plaintiff would be released from the asylum after the trial were shown by me, on cross-examination, letters Reckenbiel had written to his wife. I asked, "Doctor, do these letters show the mind and handwriting of a man who was a Boy Scout leader, who belonged to the various lodges, who was a healthy, normal individual?" I read these letters to the jury, I passed these letters to the jury to show the handwriting, I gave them the demonstrative evidence portrayed in these letters of this man's state of mind.

Gentelmen, let me read one of these letters. You must appreciate that this plaintiff was in an asylum. He is a grown man, he is forty years of age, he had all the social accomplishments and attributes that I have heretofore given you. I read you one of the letters which was given to the jury, and which letter, of course, was introduced into evidence and was photostated and incorporated in the brief on appeal so that the judges could *read the letter, not my description of it:*

> "Darling, Maxine, I love you. How was your ride home O.K.? Wonderful I know. Do you love me? I pray honey. You have faith in me I have in you. I want to be home I do. I love you and Dolores. God is a good person. I love Him. I want you both to love me. I want you both. I pray I come home. dear. you both pray for me. Love Freddie"

This is the man defense doctors said would be home as soon as the trial was over. The doctors said the best therapy for him would be to take him home. It was the most brutal thing I have had to combat in a courtroom. This woman whom I represented came to me during the recess and said repeatedly, "I love this man, I want to take him home, maybe we should bring him home, maybe we are wrong. Maybe all of these defense

doctors know what they are talking about. *Human beings just can't be so cruel and insincere* as to lie about this!"

Yet I knew that if Reckenbiel were allowed home there would be a further tragedy visited upon this family.

You have a tremendous task when you are trying the plaintiff's case; you are beset with the utmost tragedy that may befall the human being. There is nothing more personal to him than his body. It has been wrecked, devastated, physically bankrupt when he comes into court, through you, as a plaintiff. If you are humble and sincere when you present his cause, there can be no complaint that plaintiff's lawyer is asking for sympathy. Defendant's only complaint can be that plaintiff's lawyer is *portraying the facts.*

I recall trying a criminal case involving a death at San Quentin Prison, California. The defense was self defense. It seemed, even to me, far fetched when I first interviewed my client in the Captain of the Guard's office. He claimed he was standing over a boy he had knocked down in a fight after an argument. Up to this point, apparently no unfair advantage had been taken by either side. It was an altercation born of mutual anger.

My defendant went on to say he kicked the deceased as he was lying on the ground because the deceased had pulled a knife out of his pocket and was ready to throw it at him; that he kicked the prostrate man in self defense.

It seemed ridiculous to me that a prisoner in such a well-regulated prison as San Quentin would have on his person a knife. If I had this thought the jurors must be susceptible to the same doubt. They must appreciate that prisoners in San Quentin are not allowed knives. However, to my astonishment, I find out that most prisoners at that were allowed knives in San Quentin, up to a certain length. Beyond that length, the knives were confiscated. I happened to remark upon this to the Captain of the Guard. He pulled open a drawer and showed me some hundred knives in the drawer that had been confiscated!

When the case came to trial I told of the custom of allowing the prisoners certain knives, but, portraying to all the senses, those of sight as well as hearing, I then subpoened by duces tecum the drawer with all of the knives that had been confiscated in the Captain of the Guard's office. When these came to court I had the Captain of the Guard himself take this drawer of knives and dump the whole drawer in front of the jury. I dispelled by this use of demonstrative evidence the feeling that prisoners in San Quentin did not have access to knives. In doing this I laid the foundation for the plea of self defense and was able to achieve for this boy, that I represented, a verdict that was based on fact.

Demonstrative evidence is available in every case. It is limited by the scope of the imagination of the trial lawyer. There are many points of entry to the logic that compels conviction. Jurors, we sometimes forget, are human beings neither to be talked down to nor to be talked up to. You must discuss your case with them, not argue it at them. It may be necessary to prove your point by the use of various pieces of demonstrative evidence all impelling to the same factual conclusion: photos, actual physical exhibits, testimony of experts, and experiments. No trial judge will limit

your portrayal of your cause claiming repetitiveness when you portray the same fact in different manner.

Demonstrative Evidence on Appeal

The appellate judge too, is a human being. There is no magic in the cloistered chambers of Cloud 8—the Appellate Tribunal. That our appellate judges have not sustained adequate awards in some of our states is the fault in many instances of the trial lawyer. He has failed to protect his record and his jury award. The end of a law suit is not the report of the stewardship of the foreman of the jury in his verdict. It only ends after the long tortuous road of appeal is traversed.

Any evidence introduced that is of a physical nature we photostat or photograph at each recess after its introduction and have the photostat or photograph marked as an exhibit just as much as, and regard it just as carefully as, the words that are spoken and that are preserved in the reporter's transcript.

Demonstrative evidence in the form of physical exhibits or pictures should be available to the senses of the jury throughout the entire trial. By this I mean you should tack up your pictures throughout the courtroom, on the blackboard, or on the walls, so that the jury can refer to them, as the witnesses refer to them, that the jury may refresh their minds as to a particular mark on a picture, depicting the scene of the accident.

Don't let your clerk stamp your photography or your physical exhibit and then put it in his desk drawer out of the sight of the jury. If he does that, take the exhibit and hand it to Number One Juror and, calling him by name, ask him to pass it among the twelve jurors. When the twelfth juror has handed it back to you then pass it up to the judge and let this thirteenth Juror examine it If the clerk again attempts to put it in his desk drawer, put it on your counsel table in plain sight of the jury, so that the jury may refer to it. In your argument always advise your jury that any exhibits are available for their inspection in the jury room and further you might remind them, remembering that you have the burden of proof and the verdict that you want is one of fact not of confusion, that they may have any parts of the testimony reread to them and they may come back into court and ask of the judge that he reread any instructions. If you know that you have this privilege and the jury knows they have this privilege and if you appreciate that this privilege should be employed then you have the sincerity of your cause that facts will impel an adequate factual award. Daniel Webster said: "Murder will out." If you use demonstrative evidence as it is available to you then facts must out and reflect themselves in the award.

I show you a brief we did in *Duvall v. T.W.A.*[18] You will note that in this brief we introduced a number of pictures in the trial court. Every one of these pictures then was rephotographed and blown up and incorporated into the appellate brief. (We always have a trial brief from our brochure, both on the law and on the facts.) You will note that under these pictures in this appellate brief we have a terse comment. Note this one:

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[18]98 A.C.A. 115, 219 P.2d 463 (1950).

"The truck was over the double line, R.T. pg. 51." This is a statement from the reporter's transcript; this is the fact upon which the jury based its verdict of liability. Note these other pictures. The title on this one: "The impact was violent, R.T. 62." The picture speaks for itself. A picture is worth ten thousand words and oft times, as in this case, with 7% interest, $140,000.00!

Our appellate judges being human beings and limited by the tremendous pressure of appellate business, sometimes do not have time to read an entire brief, but again, being human beings, they will look at pictures. I do not say this facetiously, I say this impellingly. You present pictures as we did to our trial jury and then incorporate them in your appellate brief and your appellate judges will look at these pictures. They impose liability at a glance.

How about the question of damages? How do you portray this on appeal?

Again I refer you to the *Duvall* brief. You will note in this brief we have a diagram of the human body, and we have an arrow pointing to the parts of the human body that were injured. The arrow indicating the injury is in black. Other arrows in red indicate the surgical procedures and the parts involved in the surgery. You will note the caption at the end of the arrow on the side of the page such as: "Surgical drainage space of retzius, R.T. 73." You will note the other arrow, "July 15, 1949, osteotomy R.T. 101." Note the number of black and red arrows in this diagram. This expresses the magnitude of the insult to this human body. At a glance, looking at this diagram, you can see the tremendous injury that was visited upon this girl in this accident. The impression that is made upon the appellate judge in this diagramatic summary is tremendous. More than that it is *factual.* It dispels any doubt that the verdict was one of passion and prejudice. It expels any excessiveness complaint. If the judge cares to corroborate your complaint of damage he has the reporter's transcript reference.

May I give you a further hint and I only wish I had time to go through more, since the subject of "adequate award" is my own personal charity. At the close of your case may I suggest that you take fifteen minutes and go through your notes and determine that everything that you intended to offer into evidence is in evidence rather than marked "for identification". Nothing is more tragic than to get into the appellate court and find your principal piece of evidence which you intended to offer was only put in "for identification".

May I also suggest that you keep a bound volume of your notes, not in the loose leaf system, but in bound books for each of your trials to which you may refer for the law of that particular case, or your argument that you made in that particular case, and index these books. I have mine going back to the first case I tried, and I find them of inestimable value, on law, fact, opening statements, and argument.

Medical Malpractice

Shall I say something about malpractice? I feel very strongly about medical malpractice. I can say that in the same breath as I say that some

of my best friends are in the medical profession. As a matter of fact, each year I give a lecture to the graduating class at the University of California Medical School.

One of the most undemocratic things I have seen practiced in law is the manner in which the medical profession has set itself aside as a privileged class. You undoubtedly have the same situation in Mississippi. In all of California there is only one doctor who will testify in a medical malpractice case! The first question they usually ask is, "Doctor, when did you get off probation?"

The plaintiff's man has a tremendous problem when he goes into court in a malpractice case; you have only one expert witness, you must have an expert witness to get by non-suit, and your expert witness is torn to pieces on qualification. I used to try to explain it away. Now I go into court and tell my jury that the only reason this case is being heard by them and the only reason we can get by non-suit and the only way that we can have this jury determine who was right and who was wrong is by getting a doctor to come to court, any doctor, that I have had to make my case on cross-examination of defendant's doctors when I have a case, and I don't go to court unless I have a case.

I tried a case the other day in which $250 was offered my client in settlement. The $250 did not portray an evaluation of the case. It expressed the defendant doctor's contempt of my ability to marshal medical testimony against him because of the esoteric rules of law and medicine in malpractice.

In this case after a Caesarian operation my plaintiff had a draining sinus in the abdomen and actually menstruated through this tract from the uterus. It was a horrible thing. The jury evaluated this case in this award at $55,000.

In my opinion, if there is anything an American jury dislikes it is non-disclosure and the setting up of one's self as a privileged class immune from process of law. Frankly I cannot come to believe that the doctors as a profession want so to set themselves up as a privileged class. However, from practice this has become the rule. In California they have even gone so far as to have in certain communities their own "courts". They have a hearing upon a member accused of malpractice and hand down their own "findings of fact". I have rarely found a case in which this specialized "court" has found one of their members derelict.

In Massachusetts there is now a statute whereby the plaintiff may rely upon medical textbooks to achieve against non-suit. This is a penalty statute. But the doctors have brought this legislation upon themselves.

I have tried a number of malpractice cases in California. I like to try them because they are a challenge. Personally I find that when these cases go to a jury, the jury is apt to penalize the doctor for non-disclosure and for the customary reticence of the members of the medical profession to testify against their brethren. I tell the jury to "take your common sense into the jury room with you." The aura of non-disclosure that permeates the courtroom in a malpractice case is distasteful to a jury. It should be distasteful to the medical profession. I say that the legislation passed in Massachusetts will become law in the several states unless the doctors re-

lease fact and honesty so that it may be available from the lips of their own members in expert testimony in the courtroom.

I know now that if a doctor testifies against another doctor, his insurance will be revoked, and I know now that his membership in the medical society will be cancelled. I am not presumptious in speaking so strongly in your state. Even if I were only thirty per cent right, this thirty per cent should shock your sense of justice!

The other day a doctor called me from one of our small communities and advised me of a case of an ineptly performed hemorrhoidectomy. The complaint was that the sypicter muscile of the anus had been cut in three places in removing hemorrhoids. This muscle is such a specialized organ that if it is cut it will not regenerate. The doctor who referred this case to me said, "We would like to have you take this case against this doctor, go all out on this and drive him out of the profession".

I was so utterly amazed I called in one of my partners to listen to the conversation. I asked the doctor if he would testify against the other doctor and he said he would gladly testify and he had other doctors who would testify likewise. Mind you, this doctor was head of the county medical society of that particular county.

Finally I found out that the defendant doctor was an osteopath. Well, if Old Joe, the osteopath defendant in this case had been a member of the medical profession, that is an actual M.D., if he had come into the operating room with a rusty knife and a pair of overalls on, from past experience I can truthfully say that there would have been dignified and adequate testimony that Old Joe had made a slip, that it was standard practice, that he had gotten an untoward result in a tough job, and that the patient shouldn't have complained.

Gentlemen, I say no more. I think that the medical profession should have a reapproachment with the legal profession in malpractice cases and they should say publicly that which they have said to me many times in private.

Use of the Blackboard

Have you time for me to tell you about the use of the blackboard? Good. I think it's the most important instrument in legal surgery.

Demonstrative evidence is used for two purposes: (1) to show liability, and (2) to show the severity of injury. Its use is limited only by counsel's imagination or, a proper term, counsel's ability to portray forcefully, and the amenities of courtroom decorum. Let me say here that I believe I have as much respect for the decorum in court as any of my fellow practitioners. If ever I were to use demonstrative evidence solely for a spectacular effect and without attempting to portray facts of liability or damage most dramatically or forcefully I would lose my cause because I would lose my sincerity and humility.

Let us assume that you have proved a case of liability by use of demonstrative evidence. Let us assume that you have portrayed the magnitude of injury and a prognosis of permanent disability with devastating special damages. You still haven't shown your jury what an adequate award is in

dollars and cents. Remember your verdict can only be written in *dollars and cents.* It is not an equity award whereby a jury furnishes a nurse, a home, doctors and comes back into court in one month, six months, six years, or sixteen years to give further awards. *It is one lump sum for all time.* It is one day in court; it is one award.

Your jury must be told that when they go home, having written their award, they must provide for all time for this plaintiff, and his dependents. They must be made to realize that what they do this day must last this man for all life and they must be proud of the award they give when they meet this man as well as the defendant, on the street, five, ten, or fifteen years from this day.

In the courts of California we have furnished us not one, but two or three blackboards in each courtroom. In the last several years I have never tried a case but what I have used at least two blackboards. Blackboards are used in grammar school and in college to teach. We must not forget that jurors are chosen because they are not lawyers, because they are not familiar with legal liability or interpreting pain and suffering in dollars and cents. Jurors in three or four short days must be educated in all phases of law pertaining to the particular case, law that has taken you some eight or ten years to learn, and then they must in their verdict reflect the judgment of medical science and resolve conflicts that doctors have been struggling with for ten or even twenty years in resolving their opinions. Jurors need all aid so that their verdict reflects facts, not confusion. I say that if a blackboard helps us learn in grammar school and in college, then there is no misconduct in using it in the courtroom where we have to teach so much in so little time.

There is no case in the United States that says a blackboard cannot be used or that it is improper to use one during the presentation of a case. It is ridiculous to report that an attorney can say, "2 x 2 = 4" by word of mouth, yet he can't put on the blackboard, "2 x 2 = 4". You learned your multiplication tables when the teacher put the figures on the blackboard. Why? Because the visual aid indelibly impressed the same upon your mind.

Plaintiff has the burden of proof of teaching "the multiplication tables" to the jury and his time is limited. It is not only the responsibility, but it is the *duty,* of the counsel for plaintiff to help present the cause in a manner that can best be understood and remembered by the jury as they are considering the case. If he does not do this, the verdict reflects confusion and uncertainty, not fact. Defense counsel, as well as plaintiff's, certainly should not desire a verdict of caprice.

During a three or four day trial many doctor bills, bills for x-rays, nursing bills, car repair bills, hospital bills, future doctor bills, x-rays, nursing, and other special damages and related expense are introduced at various points of the trial. These amounts are not written down by the average juror. They may add up to $10,000 at the time of trial and indicate $20,000 in the future. As these amounts are offered into evidence by documentary bills or by oral testimony they should be written on the blackboard and this blackboard should be kept in plain view of the jury during the entire trial up through final argument and the judge's charge. (Of course, the blackboard cannot go into the jury room except by stipulation.) If an attorney can stand in front of the jury and remind them of all these figures, certainly

it is his duty to put them on the blackboard so that the jury may remember and consider them.

Is there authority for use of he blackboard? There certainly is. The Honorable Vincent C. Giblin, an able Florida trial judge, in the case of *Edwards v. Miami Transit Co.*,[19] said, after the use of the blackboard:

> "The court feels that it is the *duty* of counsel on both sides in final argument to use those methods most persuasive in presenting his side of the case to the jury. Counsel for the plaintiff will be permitted the use of the blackboard and may place thereon figures which have been introduced in evidence or which may reasonably be calculated from the evidence or inference reasonably adduced from such evidence."

> In *Haley v. Hockey*,[20] the Supreme Court of New York, said: "Counsel for defendant objected during the summing up of plaintiff's counsel to the use of certain figures placed upon the blackboard, illustrative of plaintiff's claims for damages. The court caused the figures so placed to be erased from the board immediately upon conclusion of the summation, before the jury was charged. In view of the fact that the blackboard had been handily placed for the use of all counsel in Jefferson County, and that both sides have, by well known custom, used the same for many years, the court cannot find that the defendant's rights were prejudiced in this case."

I am going to tell you how we break down pain and suffering into dollars and cents and put these figures on the blackboard for the jury. The authority for doing this is *Wright, et al., v. Chandler*.[21] The court there allowed counsel during final argument to break down pain and suffering into dollars and cents per hour, per day, per month, per year, per minute.

I think it might be wise to give you a few citations here as to the use of demonstrative evidence: As to experiments, see *City of Miami v. Williams*.[22] As to the exhibiting of the person of plaintiff to the jury, see *Florida Motor Lines v. Bradley*.[23] See also *Foster v. Thornton*,[24] for evidence of a pathologist pertaining to the examination of deceased's brain one year after death. Further, see *Larmon v. State*,[25] where the skull of deceased

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[19]150 Fla. 315, 7 So.2d 440 (1942).

[20]103 N.Y.S.2d 717 (1950).

[21]231 S.W.2d 786 (Tex. Civ. App. 1950). See also Wrenn v. Burch, 111 Ky. 662, 236 S.W.2d 924 (1951); Emery v. So. Cal. Gas Co., 72 Cal. App.2d 821, 165 P.2d 695 (1946), for the use of actuarial tables; and my case of Sullivan v. City and County of San Francisco, 95 Cal.App.2d 745, 214 P.2d 82 (1950), where a verdict was sustained for $125,000, and the blackboards used from opening statement through final argument.

[22]40 So.2d 205 (Fla. 1949). See also Webster v. State, 141 Fla. 369, 193 So. 300 (1940); Vandalia v. Duling, 60 Ind. App. 332, 109 N.E.70 (1915); State v. Newells, 135 Ia. 53, 109 N.W. 1016 (1906); SCOTT, PHOTOGRAPHIC EVIDENCE, PREPARATION AND PRESENTATION (1942). I also recommend to you, if I ever get it done, the work I have partially completed which will be called "Demonstrative Evidence".

[23]12 Fla. 591, 164 So. 36 (1935); 20 AM. JUR., EVIDENCE § 719.

[24]125 Fla. 699, 170 So. 459 (1936).

[25]81 Fla. 553, 88 So. 471 (1921).

was admissible to show the entrance and exit of the bullet and corroborated the evidence of the surgeon conducting the post-mortem examination.

Professor Wigmore says:

> "It would be folly to deny ourselves on the witness stand those effective media of communication commonly employed at other times as a superior substitute for words. If a simple line-plan of a house is more satisfactory than a mass of alphabetical letters arranged in words, as a mode of communication the relative position of the house rooms as observed by us, then this method of communication is equally proper to be resorted to in a witness' 'communication to the jury'."[26]

See *Chicago v. Walper*,[27] in allowing the use of a skeleton of a human foot by a physician while testifying. See also *State v. Knight*,[28] for the use of certain parts of the human skeleton by a doctor in illustration of his testimony.

With reference to using a photograph of the injured party, see *Kelly v. Spokane*,[29] where the court said:

> "The practice of admitting photographs and models in evidence in all proper cases should be encouraged. Such evidence usually clarifies some issues and gives the jury and court a clearer comprehension of the physical facts than can be obtained from the testimony of witnesses."

I have already commented to you on the use of colored pictures in burn and plastic surgery cases. I also recommend to you the use of infra-red pictures. These sometimes bring out writing invisible to ordinary photography. Infra-red pictures also show blood vessels beneath the skin which are invisible to the naked eye. They are particularly adaptable to cases where there is a distortion of the circulatory system either through trauma or surgery. Pictures are admissible in evidence for the use of a witness in explaining his testimony.[30] Posed pictures likewise are admissible if they reflect the facts.[31]

Of course in the criminal case pictures have been used for years to show the actual state of the body of the deceased. Defense counsel may scream himself hoarse that these pictures tend to inflame and impassion the jury to no avail. Yet for some peculiar reason when plaintiff shows just as accurate a picture in a civil case, defense counsel's cries of "inflammatory misconduct" are sometimes heeded by the unthinking trial judge.

In *Breedings et al. v. Runyon*,[32] the court said:

> "We now consider the propriety of exhibiting pictures of plaintiff's injury to the jury. In this we find no error. There was evi-

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[26] 3 WIGMORE, EVIDENCE § 790 (3rd. Ed.1940).
[27] 217 Ill. 605, 75 N.E. 520 (1905).
[28] 144 Ind. 121, 43 N.E. 130 (1896). See also SCHWEITZER, TRIAL MANUAL FOR NEGLIGENCE ACTIONS § 24.
[29] 83 Wash. 55, 145 Pac. 57 (1914).
[30] Ortiz v. State, 30 Fla. 256, 11 So. 611 (1892).
[31] Baston v. Shelton, 152 Fla. 879, 13 So.2d 453 (1943).
[32] 147 Fla. 123, 2 So.2d 376 (1941).

dence the pictures reflected the true condition of the plaintiff. The defendant had ample opportunity to cross-examine the photographer; to explain or refute their genuineness. *The fact that they might have been gruesome did not render them inadmissible. The purpose of all testimony is to reveal the truth to the end that courts and juries may be persuaded by it to a just decision."*[33] (Emphasis added.)

I am giving you a number of Florida citations. They come from one of our great plaintiff trial lawyers, Perry Nichols of Miami. I take pride in saying, and I am not presumptious in doing so, that Perry and I devolved, first independently of each other, and then after we met, in corroboration, this new system of demonstrative evidence in the trial of a civil suit.

Again, the plaintiff in a personal injury case has the burden of proving both liability and the extent thereof. The law does not cast upon him this burden and at the same time deprive him of those media of visual or demonstrative evidence which is used in everyday proof. When explaining personal injury, pain and suffering, and the extent of the injury, the prognosis, visual testimony in all probability is of a more creditable nature and can be better understood by the lay jury than the doctor's verbal testimony which so often loses its effectiveness because of the many technical, medical terms and phrases used by the doctor in giving his testimony.[34]

Now to the blackboard. Can you all see me from here? I have in my briefcase here a number of pictures in various personal injury cases. I wish you would look at them afterwards. Of course during the course of trial these pictures are tacked up on the blackboard so that they can be referred to the jury during the whole trial.

Here is a positive of a negative x-ray. You don't have to use the shadow box for this. This can be marked in evidence and taken into the jury room. Here is another picture of distortion of blood vessels. It is an infra-red picture. Here's some pictures of burn cases. You can see where the skin actually was "rolled" off the donor sites and transferred to the injured member. Here are some plastic surgery pictures showing the course of surgery from the time of the original accident through repair. Here is a picture showing malpractice in supposed and promised aesthetic surgery on a woman's breast. This colored picture portrays accurately the damage. Our verdict of $115,000 in this case[35] was sustained by the appellate court.

Here are some pictures taken from the tops of buildings. Here is a picture of a burn case. You see the priest administering the last rites. May I advise as to the availability of these pictures: Of course there are your highway patrol officers, your police officers, the morgue at the newspapers.

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[33]See also Miami v. McCorkle, 145 Fla. 109, 199 So. 575 (1940); 20 AM. JUR. EVIDENCE § 11. As to the complaint that the scene in the picture has been changed see Beardsley v. Columbia, 188 Pa. 496, 41 Atl. 617 (1898); Skaling v. Sheedy, 101 Conn. 545, 126 Atl. 721 (1924); First Federal Savings & Loan Ass'n of Miami v. Wylie, 46 So.2d 396 (Fla. 1950); Bonnet v. Foote, 47 Colo. 282, 107 Pac. 252 (1910); Korf v. Fleming, 239 Ia. 501, 32 N.W.2d 85 (1948); Flint v. Chicago, 357 Mo. 215, 207 S.W.2d 474 (1947); 32 C.J.S., EVIDENCE § 715.

[34]See Larmon v. State, 81 Fla. 533, 88 So. 471 (1921); Kelly v. Spokane, 83 Wash. 55, 145 Pac. 57 (1914).

[35]Gluckstein v. Lipsett, 93 Cal. App.2d 391, 209 P.2d 98 (1949).

Newspaper photographers take a number of pictures. Only one may appear in the newspaper. But if you will search your newspaper files and subpoena these pictures oft times you will get actual pictures immediately after the accident. If you will canvass the neighborhood at the scene of the accident, not only will you get eye witnesses, but sometimes, as it happened in a recent case, a curious photographer actually took a picture of the man as he was electrocuted and hanging from the power line.

You have a duty to go into the hospital and take a picture of your client as he lies in the hospital bed. If the doctor does not cooperate in taking off the bandages, where there is no danger to the patient's well-being, court order should force him so to do, so that the jury will see the true picture and not have to speculate. Defense counsel certainly should not encourage speculation, it is your duty as plaintiff's lawyer, to see that there is none.

Here's a picture, taken by me, in the hospital showing the site of the injection of the caudal anesthesia. You will see that the skin is sloughed off from the surface here right above the rectum. It shows the caustic substance introduced into the spinal canal was so strong that it burned the surface of the body. The jury easily could infer what it did to the spinal cord. This case was settled for $128,000 before trial! I would have been derelict had I not gone into the hospital room and imposed upon this woman for this picture.

Let me also say at this juncture that in California we accord the defendant, as a matter of right, as many examinations by as many doctors as he wants of our plaintiff. We do this because again, we want facts to be manifest. We hide nothing, we want the defendant to prove for himself. However, when our plaintiff goes to the defendant doctor's office, someone from our office goes with him or her, goes into the examining room and stays through the entire examination. A doctor has no more privilege of examining the human body than the lawyer. Indeed it is the lawyer who must explain fully and in minute detail the nature of the injury to the jury, whether it be an injury to the spine, the brain, the female organs, the rectum, the patella.

Of inestimable value to you are the *Visual Aids to Medical Science* put out by Clay Adams Company of New York. You may look at this catalogue after my lecture and see what is available to you for jury use. Here are charts showing the neurological system, the skeletal system, the circulatory system, here are charts showing the course of pregnancy, interruptions thereof, brain injury, flesh injury.

Of course you don't take into court neurological diagrams and surplus visual aids when only one part of the body in involved. But if you don't show the jury the actual skeletal fibula when you are asking for damages for a broken leg, how is the jury to determine factually what has happened to that particular part of the body?

Let us take the case of herniated disc. Don't forget every one of those twelve jurors has no medical knowledge. It takes a doctor four to seven years to go through medical school. Even he has difficulty in diagnosing a herniation of the nucleus pulposus. Yet we ask jurors in two or three days to determine not only whether there was a herniation of the disc, but the prognosis. Will he have pains down the back of his legs for the rest of his life? The jury is going to have to answer that in their verdict.

Not only that, we ask them to go further. We ask them to evaluate those pains in one lump sum for all future time. Never again can they come back into court and render a supplemental verdict.

If you stand before a jury and try to explain a herniated disc without the use of a neurological skeleton and the blackboard and without demonstrative evidence through visual aids, without giving the *third dimension* to a law suit, that jury is going to reflect a verdict of confusion. Furthermore, you will not get an adequate award.

How simple it is for the doctor, illustrative of his testimony, to go to the blackboard and draw a picture of the vertebral column and the nerves running from the column to the various parts of the body.

To illustrate: The doctor is on the stand, you have spent several hours in preparation with him so that you are familiar with the anatomy of the case you are trying and he knows what you will expect from him for the jury. Suppose you were to rely only upon oral testimony. Your learned doctor is qualified. He belongs to the various societies, has written the usual number of papers, has lectured at the various schools, has held offices in various medical societies. He gives a number of medical terms, which are about as familiar to this unlettered jury as the signals in a football game to the opposing side. He says because there is an area of anesthesia over the right big toe, he knows that there is a ruptured disc at L. 5. You begin to see the jurors looking at each other.

If you were to stop here, the jury would explain to you after verdict that not only did they not understand but they thought the testimony was ridiculous. But if your doctor goes to the blackboard and draws the spine, the discs, and shows how the nerves come out and course down the various parts of the body, if he has a neurological skeleton, some of these visual aids that Clay Adams puts out, he diagramatically can dispel any confusion and can show precisely that if there is an injury at the origin of this nerve there will be reflection of this injury in loss of sensation or motor ability completely along its pathway and at the end.

The end of this nerve can be traced right at the big toe. Then we can see that if something is wrong, through a ruptured disc by trauma at the origin of this nerve, there will be a depreciation of sensation at its end. It is as simple as water flowing from a pipe line. If there is a break at the beginning of the pipe line, the water won't flow through the end. Draw a line along the blackboard. Let this be a telephone line. If the line is cut or there is a short circuit or impingement at the beginning of the telephone line, you won't get communication at the end. By such use of the blackboard, by such visual aids, and corroboration of the doctor's testimony, the jury integrate medical knowledge into its verdict.

Use of the Blackboard in the Opening Statement

Can you see this colored chalk? What I am putting on the blackboard is available both to plaintiff and defendant's counsel. This is as available in your state as it is in mine.

We start to use the blackboard from the opening statement. If your case is prepared as it should be when you go into court, you have every fact that you are going to disclose to the jury available to you. You know the

actual sum of money that you are going to ask for and it is your duty to tell the jury, and the jury expects of you as a lawyer to advise them what you feel your case is worth. You cannot exaggerate the amount of money you ask for in just compensation because the jury will penalize you in other phases of the case if they see this exaggeration.

Consequently, when we make our opening statement we write down the amount of money in *dollars and cents* that we are asking for. If we have prayed for too much, we tell the jury we have and we limit our figure. If we have prayed for too little, we amend our complaint.[36]

We start with this premise: the only judgment allowable in a personal injury case is dollars and cents. Yet, in Pennsylvania for a lawyer for the plaintiff to advise the jury the amount of money he is asking for his client is misconduct! This is as ridiculous as plaintiff trying an equity case to enjoin defendant from flooding his land and then being prevented from advising the jury or the judge, if without a jury, what relief he wants!

Blackboards are available in all types of cases. Will contents, divorce cases, criminal cases, personal injury cases.

I recall using a blackboard in a divorce case that I tried in Honolulu. I felt that the judge was not appreciating the various dates at which times we alleged misconduct, the various dates financial settlements were claimed, so we put them all on the blackboard as we tried the case. I watched this judge glancing at the blackboard during the entire trial and making notes. She commented afterwards that the blackboard was of inestimable benefit and value to her. If this helps the trial judge, trained in the law, think what help it is to the unlettered jury.

I have not devolved a perfect system in the use of the blackboard. Its use is still in its infancy. Applicability is limited only by counsel's ingenuity. Perhaps you prefer to prepare charts before trial instead of going to the blackboard. Even if you do this, I suggest still that you use the blackboard and let the jury follow you as you do your actual mathematics. They in their minds will follow your computations and be factually impressed.

You should have the blackboard in your office. Work on it as you are preparing your case. See that you have all facts on the blackboard so that when you get to court you will reproduce this for the jury.

No one is born a perfect trial lawyer. He who will be one must work, work hard, be sincere and humble. It is he who will be the trial lawyer. Give me a man who is sincere, humble and prepared to use his ingenuity and he is the trial man of today. He is not the histrionic, brilliant jurist who pulls the rabbit out of the hat.

The opening statement is factual. You cannot make an argument. The court should stop you if you attempt to make argument in the opening statement. You recall in the old days that opening statements ran two and three days and if you will read these old trials you will see more argument in the opening statement than at the close of the case. The length of

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[36]There is a problem of procedure in amending your complaint asking for a larger prayer. In California it has recently been held that to do this is the presence of the jury or for the judge so to advise the jury is misconduct. Sanguenetti v. Moore, 98 A. C. A. 423, 220 P.2d 398 (1950).

the opening statement is limited only by the length of time it takes you to recount every fact that you are going to prove in that case.

Our opening statements take from one to two hours, because we take advantage of this first opportunity to run as fast as we can in this race for disclosure. I sincerely feel that the defense man who waives his opening statement is handicapping himself in this race. When the law suit begins, plaintiff knows what his case is. Defendant certainly knows what his case is and little that can be said on either side should surprise the other—if both sides are adequately prepared.

The other day I tried a case of a woman who had a sprained ankle. Apparently she had no other injuries, but a month after the accident she was incarcerated in an insane asylum. We could find no pathology. Twenty-five thousand dollars was offered in settlement of the case. I prepared my brochure on fact, law, liability, and damage. Still I couldn't convince the defendants. We went to court. I made an opening statement of over two hours, using two blackboards. I have a picture of those blackboards, taken by my photographer after the opening statement and available for the record, should there be any claim of misconduct.

We then went on through the trial and at the end of six days I convinced the defendants that there was an actual case. I showed that the plaintiff had been a passenger on the streetcar, that the streetcar had jerked, that she had fallen and injured her ankle. This was a common carrier, res ipsa case. Defendants owed the plaintiff the most care. Liability was clear. The only question was extent of damage and causation. Rather than try to hide facts, I readily admitted to the jury that this woman was a candidate for psychosis. She was an unstable individual and the precipitating shock pushing her over the borderline of normalcy would necessarily be less than in a normal person. My doctors testified that the trauma to her ankle in unfamiliar circumstances, the embarrassment thereof, and the pain was enough to precipitate the psychosis. I believed in this case before I went to court. My sincerity was reflected in my disclosure in opening statement and my medical testimony. This case was settled for $55,000.

You will note in these pictures of the blackboard that every witness to testify, both medical and lay, every event, every date, every doctor and hospital bill is written down here on the blackboard so there can be no confusion as to facts. This case required clarity of thought. The blackboard portrayed it because dates, figures and names of people who were to be witnesses are factual.

Hold absolutely nothing back in the opening statement. This is your blueprint in plain view for judge and jury of your trial. Your jury will penalize you if you have to change the foundation of your house after it is partially built or you pull a girder out of your hat to shore up the sagging side of your building. You know what your finished product should look like, by the time you come to court. You should tell the jury what you expect it to look like. If you have a case worth $150,000, you must tell this to the jury at the time of the opening statement.

Now let me tell you something of novelty in your state. I don't believe you have an award in your state sustained at $150,000 or $200,000. Yet, look at this blackboard and try to deny me in all logic that a man almost completely disabled, earning $350 per month, with a life expectancy of

thirty years, even without a wife or children, should be entitled to an award less than these figures.

On this side of the board we put the facts imposing liability. We put the various dates that are remarkable. We put the names of every witness, both lay and medical, who is going to testify and as we write their names down, we say a little something about them, what their testimony will be; if they are experts, their training, their specialty.

If Dr. Catton is to tesify, we advise as we are writing his name on the board that he is one of the leading psychiatrists in San Francisco, that he is the author of numerous books, that he is on the teaching staff of the University of California, that he was hired by the United States Government for psychiatric examinations during the War, that he has practiced in the City and County of San Francisco for twenty years, and that he maintains offices at 490 Post Street. You will note that your jury will steal a glance at the blackboard when Dr. Catton is called to testify. They have met him, they have heretofore been introduced to him. They expect him to be called. They await his testimony.

When we put Mr. Jones' name on the blackboard, we advise that Mr. Jones was standing at the corner of Post Street and Powell at such and such an hour, and we write the hour on the blackboard, and that Mr. Jones will testify that he at that hour was waiting for a streetcar and saw defendant come through a red light and strike the left hand side of the plaintiff's car. We advise that Mr. Jones is a schoolteacher who was on his way home from work, that he lives at such and such an address and has been a resident of the City and County of San Francisco for over thirty years, that his deposition has been heretofore taken and we know what his testimony is going to be as well as do the defendants. This is *statement,* opening statement, not *argument.*

Sometimes it is necessary to call a witness out of order. If you have told the jury who all of your witnesses are, what their testimony is to be, they will not be confused by sequential interruption of presentation. So, on this side of the board we put all of the facts of time, place, witnesses, to show liability.

On the other side of the board we put, or you may even use another board, in a complex case, the end result at which you are aiming in the personal injury law suit; to-wit, the interpolation of pain and suffering into dollars and cents.

On this other side of the board we write down our plaintiff's name, that he has a thirty-year life expectancy, that he is earning $300 per month, and that he is almost totally disabled. We advise the jury that at the time of trial, and we know these facts precisely because they are in our preparation brochure, that there are doctor bills of $2,000, hospitals bills of $2,000, and there will be future hospital bills of $2,000. This is $6,000 special, and I challenge you to reduce this figure. In the great majority of cases, these special damages will be far in excess of this.

Let us say that in our hypothetical case we have proved brain damage. In the *Reckenbiel* case here was an award of $225,000. Do you know what the State Compensation Insurance Fund put in as their lien? (Reckenbiel was working for the Fire Department and would be entitled to life-long

workman's compensation under California law.) Their lien was $90,000! In other words, they estimated that his life expectancy times $400 per month, the amount of money to keep him in an institution, plus his wages under the Compensation Act, would be $90,000! I think $90,000 is probably higher than any verdict achieved in your state. Yet, when an insurance company, or a state carrier, had to put down in dollars and cents under its minimum standards of compensation, the value of this case, they had no difficulty in reaching a precise figure of $90,000. (People in your state have been injured as severely.) And don't forget this is under the niggardly standards of workman's compensation.

Now let us put down the figure of $3,600, loss of wages until the time of trial, $300 per month times 12 months. It takes about a year to get to trial in California.

Then let us put down the figure of $25,000 for pain and suffering and general damages up to the time of trial. Do you think this is an extravagant figure? A case recently was handed down in New York wherein *$40,000 was allowed for ten hours conscious pain and suffering*[37]

Add these figures together and you have $36,000 up to the time of trial. Twenty-five thousand dollars is not, of course, as precise a figure as the special damages, but, let us leave $25,000 on the blackboard in the opening statement and integrate that when we come to final argument.

Now how about the loss of wages for a man 30 years of age for the rest of his life? Remember your doctors will testify *factually* that this man is not going to be able to work again and this jury is going to have to compensate him for that if the defendant cut off his earning capacity for the rest of his life. Certainly a state institution or a state agency should not be forced to carry him if defendant was wrong. Let us cut the $300 a month down to $250 for the rest of this man's life, fully realizing that with the rise of the cost of living, this man would probably be earning $500 a month in ten or fifteen years in absolute figures even if he stayed at the same salary. If you have any doubt of this go to the Department of Labor figures for the cost of living. This man at the same salary fifteen years ago was earning $150 per month in purchasing power. Two hundred and fifty dollars a month times the man's life expectancy for the rest of his life gives us a figure of $90,000 in loss of wages!

Let's look at this figure of $90,000 and see if it's fair, see if its precise. In some states the judges erroneously argue that this $90,000 is a present sum of money and it should be *discounted* say to $60,000. Again, go to the Bureau of Labor Statistics and you will find that ten years ago the dollar was worth twice as much as it is today, that the cost of living has been increasing steadily since 1900 and not in possibilities, but in definite probabilities, the cost of living will double in ten or twenty years from now. This man has a life expectancy of thirty years. Should we discount this $90,000? Rather than discount it, we should double it to $180,000. In ten years $180,000 will only be worth $90,000! This is mathematical fact, not fancy.

So, we add these figures of $90,000 and $36,000 and we have a sum of $126,000. One hundred and one thousand dollars, ($25,000 for pain and

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[37]Naylor v. Isthmian Steamship Co., 10 F.R.D. 128 (S.D.N.Y. 1950).

suffering) is precise, proved, mathematically certain, as certain as are your witnesses who testified. You cannot award this man less than $101,000 and be mathematically correct.

Yet you have not considered anything for general damages of pain and suffering. Recall again, "all this man does is live." What compensation is going to be accorded to the man by way of general damage whose right to live out his life free from pain and suffering has been traumatically infringed by the negligent defendant?

It is not such a difficult job to interpret pain and suffering into the necessary dollars and cents that go to make up the personal injury award. It is the lawyer's duty to do this.

This is the key: You must break up the 30 year life expectancy into finite detailed periods of time. You must take these small periods of time, seconds and minutes, and determine in dollars and cents what each period is worth. You must start with the seconds and minutes rather than at the other end of thirty years. You cannot stand in front of a jury and say, "Here is a man horribly injured, permanently disabled, who will suffer excruciating pain for the rest of his life, he is entitled to a verdict of $225,000."

You must start at the beginning and show that pain is a continuous thing, second by second, minute by minute, hour by hour, year after year for thirty years. You must interpret one second, one minute, one hour, one year of pain and suffering into dollars and cents and then multiply to your absolute figure to show how you have achieved your result of an award approaching adequacy at $225,000. If you throw a novel figure at a jury or an appellate of $225,000, without breaking it down, you are going to frighten both your trier of facts and your reviewer of facts.

Now how do you break this down?

I heard my good friend Jim Dooley of Chicago, one of our great trial lawyers, do it this way. He advised the jury that the doctors testified there would be continual pain throughout the rest of the plaintiff's life. He drew long line across the blackboard and said, "My plaintiff won't have surcease from pain between 11:59 and 11:60 in the morning; he won't be free from pain between one in the afternoon and two in the afternoon. I can't interrupt his life line of his and say, 'here', or 'here', there will be surcease from pain. My doctors have testified that from the very beginning of this accident to the end of his life he is going to have pain. This line represents thirty years—there is no break in it. There will be pain from the beginning of this line to the end of this line. Sixty seconds in a minute, sixty minutes in an hour, twenty-four hours a day, three hundred sixty-five days a year, thirty-one million seconds a year of conscious pain and suffering times thirty years!"

Some of your jurors blessed with health and happiness and freedom from pain have no conception what a ruptured disc means.

Jim said: "Ladies and gentlemen of the jury, it has been testified, without question, that this man has an irreparably injured back, and he is going to have it for the rest of his life. You are asked to evaluate in dollars and cents what pain and suffering is. This honorable court will instruct you that a man of this age has a life expectancy of thirty years. Let's put

it to you bluntly, what's pain and suffering worth? You've got to answer this question. You've got to award for this as well as the special damages and loss of wages. Let's take Pat, my client, down to the waterfront. He sees Mike, an old friend. He goes up to him and says, 'Mike, I've got a job for you. It's a perfect job. You're not going to have to work any more for the rest of your life and the best part of this job is once you agree to take it, you'll never lose it. As a matter of fact, you can't lose it. You don't have to do any work, and you get five bucks a day for the rest of your life. You don't have to work even one second. All you have to do is to trade me your good back for my bad one and I'll give you five dollars a day for the rest of your life. Do you know what five dollars a day for the rest of your life is? Why that's $60,000! Of course, I realize that you are not going to be able to do any walking, or any swimming, or driving an automobile, or be able to sit in a moving picture show; you're going to have to have excruciating *pain* and *suffering* with this job, thirty-one million seconds a year, and once you take it on, you'll never be able to relieve yourself of this, but you get $60,000!' " Do you think that Mike would take on that job for $60,000!

When you break down pain and suffering into seconds and minutes and look at it as objectively as this, then you begin to make a jury realize what permanent pain and suffering is and that $60,000 at five dollars a day isn't an adequate award.

So let's put on the board $60,000 for pain and suffering. Of course in your opening statement you are only privileged to say that you are going to explain to the jury and ask for $60,000 as pain and suffering in order to make up your total figure. It would be improper to argue, this must be reserved for the final summation.

The jurors must start thinking in days, minutes, and seconds and in five dollars, three dollars, and two dollars, so that they can multiply to the absolute figure. Maybe your juror will feel that five dollars a day is not enough, that it should be ten dollars per day. They may feel that it should be four dollars or three dollars a day. At least you have started them thinking; and when they follow your mechanics of multiplication, they must by this procedure come to some substantial figure if they are fair. A jury always tries to be fair; never forget this.

Let me give you another illustration in breaking down the thirty years and the absolute figure of $225,000 to the smaller figures and smaller periods. Start at the beginning: Suppose your client has traumatic arthritis. Do you know what it means to lie awake all night, to get into one position in bed and not to be able to move because of the pain and torture that an arthritic spine gives?

I had a client who told me about it. He told me that for the first couple of months after the accident he would lie awake at night, maybe doze off, hear the clock strike hour after hour. Six months later he heard the clock striking the minutes. He couldn't doze off. Then about a year later he said he would lie there on his back, looking at the ceiling, lie still; he heard the grandfather's clock in the hallway tick, tick, tick. . . . Heard every tick from the time he went to bed until the time that he was lifted

out of bed in the morning, until he was given sedative upon sedative to put him to sleep.

Pain and suffering is a continuous thing. With a life expectancy of thirty years, it is 15,768,000 minutes! How much for each minute of pain and suffering? The fact of the pain and suffering has been proved, the fact of 60 seconds in a minute is within judicial knowledge, all that remains is the computation in general damages.

So on the blackboard now we have the figure of $186,000. I say again to you that this is an ascertainable figure. When your jury starts computing with their pencil and paper, minutes and seconds and life expectancy, they are going to have to achieve the figure at least of this amount. But still there are other elements of damages upon which your court will instruct: ridicule, the objective; embarrassment, the subjective.

How are we going to turn ridicule and embarrassment into dollars and cents? You must do this. The law says defendant must compensate in dollars and cents the plaintiff for ridicule and embarrassment. Unless the lawyer shows the jury how to do this, he is derelict.

Let us take the case of the woman who had the ineptly performed hemorrhoidectomy. Defendant doctor severed the sphincter muscle in three places. It will never regenerate. Through the rest of this woman's life she will have no control over her rectum.

I shall take this woman into my office and ask her to describe her living day. I shall ask her to describe what she does when she gets up in the morning, her breakfast, her duties about the house in the morning, her lunch, her afternoon, her evening, her going to bed. I shall ask her to describe her intimate life with her husband and family. I shall ask her if she goes to the movies, to church, if she drives an automobile and if she does not, why? I shall have her later, on the stand, give to the jury a minute description of her life after this operation and her life before the operation.

Unless I show in detail the embarrassment and ridicule that she will suffer, and has suffered, this jury in its verdict will have to speculate. They may surmise that it is only in her mind that she hesitates in mingling with other people. I must show that because of this operation she is subject to the embarrassment actually of knowing that she has no control of fecal matter, that she has no control of flatulency, that she is humiliated and embarrassed, that she may even develop psychotic tendencies as a result. I must tell that jury that ridicule does not have to be a boisterous thing. I have said that ridicule is objective, that what people think of us, as embarrassment is subjective, our own feelings. Those who are overly indulgent toward the person with the physical impairment in one sense ridicule them. They do not mean so to do but they impose an abnormal relationship. The world reflects this toward the plaintiff. Her right to live normally has been infringed.

I must in detail show through each second, minute, hour, day, and then multiply times the life expectancy, just precisely how that right to live normally has been infringed, before I can ask for dollars and cents for ridicule and embarrassment. How shall I do it in dollars and cents?

I shall ask my jury to give one dollar a day for ridicule, times 365 days, times thirty years, and I achieve a figure only of $10,000. I shall do the same with embarrassment, I shall write down on the blackboard one dollar a day for this embarrassment, and I shall recount the embarrassment that this woman with the hemorrhoidectomy suffers, times 365 days, times thirty years, and I achieve a figure of $10,000.

If I asked for $10,000 for the ridicule and $10,000 for the embarrassment, the jury would not see in detail how I achieved these figures. But when I ask for a dollar a day and I detail the amount of embarrassment and ridicule, my jury may well figure that ridicule and embarrassment should be assessed at three dollars a day or even four dollars a day; and the appellate court, in reviewing the record, should sustain them.

So let's then add the $10,000 for ridicule and the $10,000 for embarrassment, and the figure now that we have on the blackboard is $206,000—$206,000 for a case of a man or a woman with a thirty-year life expectancy, incapacitated from working. And don't forget that with the woman, it is not necessary that she be working at the time of the accident in order to claim future loss of wages.

Furthermore, when you write down "ridicule," "embarrassment," and "pain and suffering," you are using the precise words that your judge is going to use in his charge to the jury when he advises the jury as to the component parts to which the quantum of damages is to be assessed. In my argument to the jury I like to use the same words and phrases the judge will use in his charge. This forces me to explain the law to the jury, and it forces me to interpret legal language in lay terms. Further the judge then emphasizes my argument.

I don't like to be the lawyer who, completely unprepared, came into court and in his final argument said,

> "Ladies and gentlemen, you and I are the only thirteen people in this courtroom who can look at this case objectively. My brother appearing for the defense is biased. He knows all about this case; he's been preparing it for weeks. I know nothing about it, I am in the same position as you. Therefore, we are the only ones who can be objective."

Don't forget when you are arguing your case to the jury that you must argue it to the thirteenth juror, the judge, likewise. He must understand the blackboard and when he agrees with your computation and figures, your defense on the motion for new trial will have been made during the course of the argument.

May I respectfully suggest to you that in the next case that you try, take a blackboard into your office and break down life expectancy into years, days, hours, minutes, and seconds. Then determine in your own mind just what you think is fair to allow in your particular case for the various elements of damage that the law of your state allows and upon which your judge will instruct. Multiply this out then on your blackboard and get your absolute figure. Put this absolute figure at the top of your blackboard and start from that in your opening statement. Then when you come to your final argument, do your multiplication in the presence of the

jury; and challenge your opponent to put his figure on the blackboard if he does not agree with yours. If your opponent, as has been done in some cases, erases all of your figures on the blackboard that you have made in your opening statement, or in your opening argument, I suggest you apologize to the jury for him and recreate the entire figures in your closing argument.

We have two arguments in California. We open, the defense gives its argument, then we close. May I suggest in keeping with this whole idea of fairness in the trial of a jury case that you discuss every phase and fact of liability and damage in your opening statement, saving only for your close the answers to that which your opponent produces on his argument. It is a mistake to make a brief opening argument and then unfairly detail your case when your opponent does not have an opportunity to answer you. Defendant makes only one argument. If you have made a brief opening argument, you may not be able to catch him on your close.

You're not privileged to embarrass your jurors by imposing the subjective argument in asking, "what would you take for an injury like this"? You're not permitted to say "Mr. Jones, if I were to lay ten $1,000 bills down on this jury rail, would you pick them up and put them in your pocket if you knew you had to suffer the injury that my plaintiff suffered?"

Yet in some manner you must bring home to that jury that this is a real flesh and blood plaintiff in front of them; you must make them realize what pain and suffering is, particularly those jurors who have not had their right to live out their life free from pain and suffering infringed in a personal injury case.

I like to see that my jury is following each part of the case. Sometimes proof becomes technical, sometimes a thought process becomes tedious. If I note that my jury is abstracted, I will often ask the one so abstracted if he can see the blackboard from where he is sitting, if he can hear the witness. I want my judge equally attentive during the entire trial.

I recall in *Sullivan v. City & County,* when my judge was too attentive. I had deliberately put upon the blackboard a series of figures that should have added up to $125,000, and I had deliberately miscalculated to $10,000, because I wanted my jury to follow the complete computation in their own minds. I wanted them to remember the facts and figures and be able to multiply them out when they went into the jury room. So as I deliberately miscalculated upon the blackboard, I noted my trial judge come from the bench, walk into the body of the courtroom, and mentally calculate. Instead of a juror correcting me, His Honor said, "Just a minute, Mr. Belli, your damages should have been $125,000, instead of $110,000!" Of course, I would rather have had him say this on motion for new trial, rather than comment during the course of argument. As a matter of fact, the verdict was for $125,000, and one of the grounds of appeal was that the judge had commented on the evidence. (Our trial judges are so privileged in California, but counsel criticize this procedure as misconduct.) The appellate court in its decision commented that it was not beyond the realm of expectation that a trial judge at least could add and add properly. It was his duty so to do.

In the case of *Sullivan v. City & County* the award of $125,000 we

felt was inadequate: Here was a young red-headed kid of 21 years of age, just back from the South Pacific, in perfect health, married, one child, a fireman. He had suffered an accident on the Municipal Railway. His hospital and doctor bills had been over $25,000. He had a rupture of the urethra at the junction of the prostate; he will be impotent for the rest of his life and he will have to have painful catherterization every ten days for the rest of his life, otherwise his urethra will close, his bladder will burst!

In that case I called a psychiatrist to show the psychic damage as well as the physical impairment. I sincerely believed that this boy's married life would be impaired, and I so told the jury. I was even fearful that the end result of this case would be self-destruction. Two years after this case and its award, plaintiff is still incapacitated, his home is broken, his wife divorced him. He has little compensation in the $125,000 awarded.

As lawyers let's look at the verdicts realistically. The client doesn't get $125,000. Generally one-third of this goes to the lawyer. Should our appellate judges be practical and take cognizance of this?

Gentlemen, I have more than digressed upon my time. There are a number of pictures and diagrams and briefs in which you may be interested and which I would like to show you from my briefcase.

I thank you again and again for the privilege of appearing before your great Bar Association, you've been most hospitable in sitting through the entire noon hour, but it was no more than I expected. Your state is one of the homes of hospitality. I would like to be asked back. I would like to spend more time here with you in informal as well as formal discussion.

The next order of business was the election of officers. The following were duly elected:

Quitman Ross, President

Robert Newton, Vice-President

Lester Nate Williamson, Second Vice-President

While the ballots were being counted on the above elections, Judge Lester Clark read a resolution from the Resolution Committee dealing with the Bar's American Citizenship program. This resolution was adopted by the Bar and may be found in Appendix B.

The City of Biloxi was then chosen again as the site for the next meeting of the Mississippi State Bar.

The last order of business was the election of commissioners by the individual groups from each district with the following results:

W. C. Sweatt, First District

William Hewes, Second District

Robert Smith, Third District

Edwin White, Fourth District

W. R. Ford, Fifth District
James A. Torrey, Sixth District
Francis Bowling, Seventh District
Herman Alford, Eighth District
Karl Weil, Ninth District
Marvin Williams, Tenth District
Howard Coleman, Eleventh District
Warner Beard, Twelfth District
J. K. Keyes, Thirteenth District
W. H. Watkins, Fourteenth District
J. M. Morse III, Fifteenth District
John Holloman, Sixteenth District
C. M. Swango, Jr., Seventeenth District

The convention adjourned.

PROCEEDINGS OF THE FIFTEENTH ANNUAL MEETING OF THE

JUNIOR BAR SECTION

Held at Biloxi, Mississippi on the 31st of May, 1951

The assembly was called to order at 2:00 P.M., May 31, 1951, in the Buena Vista Hotel in Biloxi, Mississippi, by Mr. E. C. Brewer, Jr., President of the Junior Bar Section.

The invocation was delivered by Reverend George Stephenson of Gulfport.

An address of welcome was delivered by Mr. Lampkin Butts of Gulfport, and was responded to by Mr. Joseph Wroten of Greenville.

The Convention then turned to the consideration of various committee reports and recommendations. The first of these was the report of the Memorial Committee, which was submitted by its Chairman, Mr. Jeff Hamm, and given by Mr. Jack Travis. At the conclusion of this report Mr. Travis moved that the report be adopted, and this motion carried. The combined report of the Junior and Senior Bar Memorial Committees appears in Appendix A.

President Brewer then called for the report of the combined Committees of the Junior Bar, the Ole Miss Alumni Association and the University of Mississippi Law School concerning the setting up of an educational fund for needy law students. The report of this Committee, which was given by Mr. James Robertshaw, was adopted by vote of the assembly. Mr. Roland Marble next read a report submitted by Mr. Overton Currie on the First Annual Lawyers' and Certified Public Accountants' Tax Institute. At the conclusion of this report, Mr. Marble moved that the Junior Bar Association sponsor the October, 1951 Lawyers' and Certified Public Accountants' Tax Institute. This motion was seconded and carried. The report of the Jackson Junior Bar Association concerning the Fifth Annual Law Institute was then presented by Mr. Rowan Taylor, and was adopted by the Junior Bar. The reports mentioned above may be found in Appendix A.

President Brewer then presented Mr. Lee B. Agnew, who gave the report of the Committee on the Unauthorized Practice of Law. The motion was made by Mr. Agnew that this report be adopted by the convention and this motion carried. This was followed by the report of the Committee on the Unethical Practice of Law, which was given by Mr. Roland Heidelberg, Jr. At the conclusion of this report Mr. Joseph Wroten moved that the report of this committee be adopted, and further that this matter be presented to the Mississippi State Bar and discussed with them, and that the incoming President of the Junior Bar be requested to implement the purposes set forth in this report. This motion was seconded and carried. Mr. Palmer then moved that it be mandatory on each suc-

ceeding President of the Junior Bar to appoint a committee on unethical practice as a standing committee of the Bar. This motion was also seconded and carried. These reports may also be found in Appendix A.

The report of the Code Study Committee, of which Mr. Dan Shell was Chairman, was read by Mr. Billy Ford and was adopted by the assembly. President Brewer next presented Mr. Bob Nichols, who gave the report of the Legislative. The report of the Public Relations and Information Committee, submitted by Julian P. Alexander, Jr., was then read by Mr. Billy McGee. President Brewer then read the recommendations of the Executive Committee. Mr. Roland Heidelberg moved the adoption of these recommendations, and this motion was seconded and carried. The above reports and recommendations appear in Appendix A.

The session adjourned.

FRIDAY, JUNE 1, 8:00 P.M.

President Brewer called the meeting to order and presented Dean Robert Farley, who introduced Mr. Richard B. Montgomery of Fenner, Montgomery, and Brown of New Orleans. Mr. Montgomery delivered the following address:

WORKMEN'S COMPENSATION

Richard B. Montgomery

Ladies and gentlemen, it is needless for me to tell you how greatly honored I feel at being invited to address the Mississippi Junior Bar. It is one of the great honors that I have had in my life.

I think that I am actually quite nervous about this occasion. Usually when a lawyer is invited to speak from out of the state he talks about some such subject as the welfare of the nation. However, I am going to try to talk to you on a subject about which everyone of you is as familiar as I am. Consequently, I am somewhat in the position of carrying coals to Newcastle.

It necessarily follows that I must make my speech rather general. It is impossible for me to talk on the subject of the Mississippi Conpensation Act. Your act has only been in effect for two years, and I naturally do not know the rulings of the Commission. There have been only two cases decided by the Mississippi Supreme Court. One of these involved the question of whether or not the appeal from a Circuit Court took precedence over other appeals and had preference. The court held that it did not. The other case involved the question of whether the occurrence of a hernia was in the language of your statute.

In view of the differences which exist between the Mississippi Compensation Act and the Louisiana Compensation Act, I will not attempt to discuss the Mississippi Act directly. I will endeavor, from my own experience and the experience of other Louisiana lawyers in compensation cases, to tell you of some of the rulings which I hope will be avoided in Missis-

sippi, and also to discuss the question of jurisdiction under compensation laws.

The Louisiana Act, Section 1, states that it shall be administered in cooperation with other state and federal authorities for the prevention of injury to workers, and, in the event of injury, their rehabilitation or restoration to health and vocational opportunity. This short section embodies the whole philosophy of the Compensation Act.

When Louisiana was considering the adoption of a compensation act, the legislature appointed a commission to study the subject in 1912. On this commission was a very able lawyer by the name of Herbert Kaiser who gave a great deal of time to the study of compensation acts in other states and in foreign countries. In his report he said:

> "The main justification for compensation furnished by an employer to an employee in cases in which the employer is not responsible for the accident is because it is considered that the accident arose from a danger inherent to an occupation necessary to society, and that the burden should be borne through instrumentality of the employer by the public to such an extent as the increased cost to him, may be added to the increased cost of the product."

Again, we find that the Commission itself said in its report to the legislature:

> "We have suddenly awakened to the fact that the accidents which are inherent to occupations hazardous in their nature, and which occupations are a necessity of the social and economic demands of the age, call for an adjustment from the viewpoint of the social obligation involved and this calls for compensation laws based, not upon the obligation of the individual employer, but rather upon the obligation of society to protect the employee injured in an undertaking hazardous in its nature and necessary to social needs."

Horovitz, about whom I am sure you all know, a writer and attorney, who is pro-plaintiff and pro-employee, says in his book,[1] in regard to the adoption of compensation acts, that the above is the true intent of the Act.

One of the first problems which I believe will face the Mississippi court is an interpretation of Section 8 (c) (21-22), (e) of the Act.[2] It will not be long before some attorney will be attempting to persuade a Mississippi commission or a Mississippi court that the Louisiana rule in regard to total disability should be adopted. The Louisiana Act, Section 8, is similar to the Mississippi Act in all respects, except that it does not use the language "other employment" as is in the Mississippi Act. However, the language is just as clear as in the Mississippi Act. A reading of these sections would lead one to only one conclusion—that if an employee were injured and was not able to return to his former employment, but could

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[1] HOROVITZ, WORKMEN'S COMPENSATION (1944).
[2] MISS. CODE §§ 6998-09 (C) (21-22), 6998-11 (1942).

get substantial gainful employment—the award should be 66-2/3 of the difference between the injured employee's average weekly wages before the injury and his wage earning capacity after injury in the other employment.

However, the Supreme Court has eliminated temporary partial disability and total partial disability. The Louisiana courts in two cases have destroyed the whole philosophy of the act. The first case was *Ranatza v. Higgins Industries, Inc.*[3] In this case Ranatza, a carpenter, was injured while working at Higgins. He could not return to his employment as a carpenter, but obtained a job as a passenger bus driver making practically the same wages that he made as a carpenter. The court held, however, that since he could not do heavy carpenter work he was totally disabled and not partially disabled. They gave him 400 weeks with maximum benefits.

The second case was the case of *Butzmann v. Delta Shipbuilding Co.*[4] which is an even greater miscarriage of justice. In the *Renatza* case the plaintiff had been a carpenter all his life, and the court took the position that after the war and when there was no longer a heavy demand for labor, Ranatza would not be able to continue his employment as a bus driver and could not do work as a carpenter. The *Butzmann* case is a most remarkable case. The plaintiff was a janitor in the Criminal Courts Building. For patriotic or monetary reasons he decided to work in an industry, went to a training school and became a welder. However, he kept his janitor's job. He was injured while working as a welder. After being discharged he went to another job as a burner. The court, by some stretch of the imagination, found that a welder and a burner were two different types of employment, and although he was still employed as a janitor and making the same wages as a burner as he had made as a welder, and althought he was not a welder for any period of time, having been injured after working for two days, he was granted 400 weeks compensation.

There are only two other jurisdictions which ever adopted such an extreme view. One was Michigan and the other was Wisconsin. Horovitz has this to say in regard to the question:

> "However, for a time in Wisconsin and Michigan inability to work in the former employment alone was the test, so that an employee could obtain compensation even if he were earning more wages in another employment. The currently used standard and a fairer one, is the earning capacity in the *same or other employment.*"[5]

It is to be noted that the legislature of Michigan remedied the matter, and the court of Wisconsin changed its decision.

However, there is always, of course, under modern jurisprudence a tendency to liberalize the law in favor of the employee. There has been in Mississippi, before the passage of the Compensation Act, I am informed,

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[3]208 La. 198, 23 So.2d 45 (1945).
[4]21 So.2d 80 (La. 1945).
[5]Horovitz, Workmen's Compensation 275 (1944).

a decided tendency in favor of the employee.[6] I understand that the fellow servant doctrine, assumption of risk, and contributory negligence have been eliminated. Therefore, the reason for the Compensation Act in Mississippi is the same reason that was given by the Commission in Louisiana for its adoption.

It is probable that such a tendency will continue to exist in interpreting the basic principles of the compensation act; namely, liberality. In a very able argument in *The Mississippi Law Journal,* entitled "Basic Principles of Workmen's Compensation," Mr. Douglass A. Campbell said this:

> "The Legislature of the State of Mississippi has outlined the statutory framework upon which its Workmen's Compensation Commission and judiciary must weave the pattern of the day-by-day application of the new concept of employer-employee relations. It is inevitable that situations will arise in which careful analysis is demanded if the jurisprudence of workmen's compensation as it grows in Mississippi is to attain its full stature undeformed by unwise bulging, restrictions, or distortion."[7]

I like that language—unwise bulging, restrictions, or distortion.

Most certainly the principle of eliminating partial disability from the Act is both unwise, bulging, and a distortion. It is my opinion that any unwise bulging will destroy the philosophy of the Act and does injury to the employee and to the public. I do not speak solely as an insurance lawyer representing only insurance companies, but I am speaking from the point of view of an attorney who also represents business interests and has represented employees. In my opinion, if the Compensation Act is a shifting of the burden of injury in modern business through the business man to the public, one must take into consideration at all times the cost of this burden.

Mississippi has made gigantic strides in obtaining industry. More and more states, however, are competing for industry, and the burdens which are placed upon industry increase the cost eventually to the consumer and determine in which state business is going to locate. Business is competitive and an industry which is burdened in one state with too high costs of insurance is bound to suffer in competition with industries in other states. I think that it is the duty of lawyers not to allow such bulging and streching of the Act to the detriment of all. There is a duty upon the bar as a whole, it would seem to me, to uphold the philosophy of the Act rather than to obtain strained decisions which are beneficial to only a few litigants. For instance, in a report by two doctors, Dr. Alexander P. Aitken and Dr. Charles H. Bradford of Boston, investigating the results of ruptured intervertebral discs in industry, who find the following:

> "We are well aware of the fact that the average compensation case is not the best possible material for a favorable and result study. The desire for financial reimbursement for injuries received

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[6]Malone, *The Mississippi Workmen's Compensation Act in Prospect,* 20 Miss. L. J. 137 (1949).

[7]20 Miss. L. J. 117 (1949).

> is of paramount importance to many individuals. That this fact has definitely influenced the end result cannot be denied. However, the period from 1940 to 1944 was one of intense industrial activity brought on by the war. High wages were to be had even by patients who had partial disability. As a result, the results during this period are probably better than they would be in normal times."[8]

In other words, these doctors came to the conclusion that to determine the success of intervertebral disc operations in cases involving compensation should not be studied, as they did not give the proper conclusions, because of the fact that invaribly a compensation case took much longer to get well than did a case where a person not receiving compensation was operated on. I am citing this to you, because I wish to show the bad effect upon the employee of too liberal compensation awards. This is also another method of extending the compensation act, namely, by allowing the employee to draw compensation benefits after he is no longer disabled.

Wherever there is no attempt made to force rehabilitation through proper awards, one finds that either consciously or unconsciously the workman prolongs the duration of his injury. For instance, an interesting sidelight is the statistics of recovery following traumatic neurosis under the compensation law of Denmark (providing for a lump sum settlement), and across the border in Germany (providing for weekly benefits). The statistics show that Denmark neuroses persisted in five per cent of the cases and in Germany in ninety-five per cent of the cases. We find the following statement in a very interesting paper entitled "Discussion on the Workmen's Compensation Act as a Factor in Prolonging Invalidism" in the *Proceedings Royal Society Medicine:*

> "They provide strong support for the contention that reform of the Acts must move in the direction of taking away the accent on compensation, and must concentrate on the essential problem of how best to get back to normal activity and work a man who is temporarily disabled. Incidentally such reform would do away with the futile disputes between medical witnesses about a causation which is inevitably obscure and largely beyond our present knowledge accurately to assess.
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> "There are certain prophylactic factors which should come into operation from the date of injury, and exert and effect throughout the whole course of treatment. These are factors which subserve the maintenance of bodily and mental efficiency, physical and mental exercise, the preservation of self-respect, and the constant nourishment of the 'will to recover.' As Jefferson, in a recent communication has said: 'From the first the patient must be made to realize that he is an active collaborator in his own treatment, and that he must accept some responsibility in his progress towards a successful result.' Measures of this kind may well

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[8]American Journal of Surgery (March, 1947).

make all the difference between rapid recovery and needlessly prolonged invalidism."[9]

There are numerous articles on the subject of the effect upon the employee of too liberal compensation awards. If the commission is going to carry out the very purpose of the Mississippi Act, namely, the rehabilitation or restoration to health and vocational opportunities, it is essential that the commissions and the courts of this state do not make awards which are unjustified by the condition of the employee. You may think that I am crying "wolf," and that there is no need to worry about it in view of the fact that Louisiana is the only state that has written out of its Act partial disability, but that is not true.

I would like to have you hear a summation by a very able Detroit attorney of what states have done in compensation cases in awarding the liberal theory:

> "The benefits which the various legislatures have extended for total disability are nearly as varied as there are Compensation Acts. For instance in Arizona an injured employee who is totally and permanently disabled is entitled to 65% of his weekly wage at time of injury for the remainder of his life and without restriction as to a weekly maximum or total amount recoverable, while in the State of Vermont the employee is limited to a weekly maximum of $20.00 for a period of 260 weeks, or a total recovery of $5,200. Other statutes provide for recovery somewhere between these two extremes with the weekly rates being based on a percentage of wages at time of injury and length of disability, but . . . The question as to what constitutes 'total disability' has resulted in nearly as many rules as there are Courts and Boards who are charged with the duty of deciding the facts. Generally speaking, however, the word 'disability' as it applies to compensation cases refers to a physical incapacity, attributable to the employee's work, which has resulted in inability to work and a consequent loss or reduction in earnings. 'Total disability', as originally interpreted by the fact finding bodies, was construed as a physical or mental condition resulting from injury which disqualified the employee from performing the usual tasks of a workman and prevented him from performing and retaining employment or work of the *general character* to which he had been accustomed or fitted. At no time was it ever considered necessary for an employee to be absolutely disabled, bedridden, or totally paralyzed to be classified as 'totally disabled'. Any condition, resulting from injury, which caused or produced a lack of physical ability to follow continuously *some substantial and gainful occupation* without material injury to life or health was held to constitute total disability . . .
> "The exception to this general rule was the treatment afforded the so-called 'skilled labor' class of employees. In such cases it has been consistently held that inability to do the particular work, regardless of the employee's physical ability to work and

[9] 35 Proceedings Royal Society Medicine 495 (May, 1942).

earn wages in other fields, constituted 'total disability.' Likewise, we have previously mentioned, some of the states do have statutory provisions affording relief to injured employees for 'total and permanent disability' in the event of multiple specific losses or scheduled injuries.

"From the foregoing it clearly follows that the question of whether a workman is totally disabled is primarily a question of fact to be determined by the various Commissions, Boards, or Courts having the fact finding authority. In this respect it is pertinent to mention that in all but five states this important function has been assigned to Boards and Commissions.

"The findings of facts of such Commissions, in the absence of fraud, are, generally speaking, final determinations and cannot be reviewed by courts of appellate jurisdiction. It follows, therefore, that the question of what facts constitute 'total disability' in compensation cases is largely controlled by the attitude of the local administrative body.

"Unquestionably during the past few years there has been a trend toward a more liberal interpretation and extension of Workmen's Compensation Acts. This trend has naturally had its effect on the attitude of the various Boards and Commissions toward what facts should constitute total disability. More and more there has been a trend to award compensation for total disability and such awards are ordinarily made upon the theory that the injury has relegated the employee to 'odd lots' or 'nondescript' employment and by the extension and application of the 'skilled labor' rule to workmen engaged in common labor. In other words, the test being applied, although not always assigned as the reason for the finding, is whether or not the employee is capable of performing the particular job at which he was engaged when injured, rather than his ability to work and earn wages in his general classification."

At this point I am glad to note that the Mississippi Act provides for an appeal upon both the law and the facts from the Commission. I find no case in Mississippi which has determined, as yet, how far the court will go in overruling the Commission. Section 20 of your Act says:

"The circuit court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the Commission for enforcement. If prejudical error be found, the same shall be reversed * * *."[10]

Now the general rule is that if there is any meager evidence or testimony to sustain the findings of a Commission or Board, the courts of appellate jurisdiction are powerless to relieve from inequitable circumstances. This rule was stated by the Michigan Supreme Court in the case of *Hood v. Wyandott Oil & Fat Co.,* as follows:

"We do not weigh the evidence. The weighing scale is in other

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[10]Miss. Code § 6998-26 (1942).

hands, and even if we think it out of balance, we cannot reweigh."[11]

If the Mississippi Supreme Court decides to actually weigh the evidence, very definitely Mississippi will not, in my opinion, fall eventually into the category of states where the Commission distorts the Workmen's Compensation Act and its philosophy, but in my opinion, in a final analysis only a fair and impartial administrative attitude on the part of the Commission presents a real answer to the whole problem. Such an administrative attitude will be beneficial to the lawyers, to the community, to the employers, and to the employees.

After all, you gentlemen must know that most compensation insurance is written on a retrospective basis. The insurance company does not lose in the end by reason of too liberal decisions. The insurance company passes on the cost to the employer who in turn passes it on to the public. The public has never hesitated in these United States to assume burdens which are beneficial to society, but it should not be called on in these times of high taxes and expenses to assume burdens which are not beneficial to employees but which merely tend to prolong rehabilitation and to induce malingering.

I now pass on to the question of jurisdiction—the question which has bothered many courts and which I do not believe I can solve. I can at least, however, point out some of the decisions and results flowing therefrom. As you know, there is a United States Act which is known as the Longshoremen and Harbor Workers' Act. I presume more and more of you attorneys are coming into contact with this act as barge lines and inland waterways craft navigate more and more inland streams. This Act is administered by a Commission, but different from the Mississippi Act, there is no review of facts allowed. Some of the decisions on facts fall within the category which I have been discussing.

You are going to have to decide questions as to whether or not certain workmen come under the Mississippi Compensation Act or the Longshoremen and Harbor Workers' Act. The Longshoremen and Harbor Workers' Act covers injuries occurring upon navigable waters where the worker is engaged in maritime employment. The Court of Appeals for the Fifth Circuit has passed upon the matter in three cases and has defined what comes within the Federal Act and what comes within the local act. In *New Amsterdam Casualty Co. v. McManigal,*[12] the Court held that accidents occurring on navigable waters but having no direct relation to navigation, and where the application of the local law could not materially affect any of the rules of the sea whose uniformity is essential, the matter comes under the local law. The courts have gone far towards bringing practically all accidents occurring upon navigable waters to employees whose duty requires them in any way to go upon the navigable waters within the federal court. There are two cases which discuss this in extenso and are worth reading: *DeBardeleben Coal Corporation v. Henderson,*[13] and *Employers Libility Assurance Co. v. Cook.*[14]

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[11]Hood v. Wyandott Oil & Fat Company, 272 Mich. 190, 261 N.W. 295 (1935).
[12]87 F.2d 332 (1937).
[13]142 F.2d 481 (1944).
[14]281 U.S. 233 (1930).

An interesting question which will come before you is whether or not workers in shipyards working on boats which have been withdrawn from navigation come within the local or the state law. There are two cases which have held that they come under the local law.[15] Of course, you all know that seamen aboard vessels come under, neither the Longshoremen and Harbor Workers' Act nor the Mississippi Act. They come under an act which is called the Jones Act. Your Act specifically excludes transportation and maritime employments from it. A "seaman" is anyone serving aboard a vessel or ship who in any way contributes to navigation. This includes fishermen.

Another interesting problem which you will have to deal with is the question involving employees of companies doing business in more than one state. The principal issue arises when a contract of employment, for instance, is made in Louisiana, and the employee goes into Mississippi and is injured. Which law will apply? Undoubtedly, under these circumstances, both Louisiana and Mississippi have jurisdiction. The Louisiana Supreme Court has just recently held:

> "Once it has been established that the contract of employment was entered into in Louisiana, a Louisiana court, which has jurisdiction ratione personae of the litigants, will give the Louisiana Compensation Statute extraterritorial effect, to cover injuries received in another state or in a foreign country."[16]

Furthermore, there can be no doubt but that the Louisiana courts have jurisdiction to do this very thing. In the case of *Bradford Electric Light Co., Inc. v. Clapper*,[17] the Supreme Court of the United States held that where a Vermont employee employed in Vermont a resident of Vermont, but the said employee was killed in New Hampshire while in the course of his employment, the law of Vermont would apply, and that it would preclude a suit brought in the other state for injury under tort law. It further said that in this particular case the only compensation act applicable was the Vermont Act because the New Hampshire Workmen's Compensation Act only applied to New Hampshire employees. You can see that the New Hampshire Act is different from the acts of other states, because in the case of *Magnolia Petroleum Co. v. Hunt*,[18] the Texas law was held to allow compensation to an employee who was a resident of Louisiana and hired in Louisiana by a Louisiana Corporation but injured in Texas.

Therefore, there are going to be two questions which will have to be answered under Mississippi law:

1. The first is, does the Mississippi law have extraterritorial effect?

   Or, in other words, does an employee employed in Mississippi but injured in Louisiana come under the Mississippi Act?

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[15]DeGraw v. Todd Shipbuilding Company, 134 N.J.L. 315, 47 A.2d 388 (1946); U.S. Casualty Co. v. Taylor, 64 F.2d 521 (1933).

[16]Ohlhausen v. Sternberg Dredging Company, 218 La. 677, 50 So.2d 803 (1951).

[17]286 U.S. 145 (1932).

[18]320 U.S. 430 (1943).

I would say he does. Section 2 of the Act, together with Section 3,[19] leads to only one conclusion, and that is that it is the place of the contract of hiring and not the place of the accident that governs.

2. The other question is whether the Mississippi Act provides for jurisdiction for a Louisiana employee injured in Mississippi?

This, in my opinion, also has never been determined. In other words is the Mississippi Act like the New Hampshire Act or like the Texas Act?

There is one other U. S. Supreme Court case to which I want to call your attention: *Alaska Packers Assn. v. Industrial Accident Commission of California.*[20] In this case the Supreme Court said that liability under the Workmen's Compensation Act is imposed as I said previously, as an incident of the employment relationship as cost to be borne by the business enterprise rather than as an attempt to extend redress for the wrongful act of the employer; that any act had the power to impose liability on the employer for injuries sustained by the employee outside the state without violating the due process laws provisions of the United States Constitution.

Now to return to the *Magnolia Petroleum Co. v. Hunt* case for a minute. I wish to say that this case holds that both the state of the making of the contract and the state of the accident have jurisdicion. Justice Stone put it this way:

> "Here both Texas and Louisiana have undertaken to adjudicate the rights of the same parties arising from a single injury sustained in the course of employment under the same contract. Each state has awarded to respondent compensation for that injury. But whether the Texas award purported also to adjudicate the rights and duties of the parties under the Louisiana law or to control persons and courts in Louisiana is irrelevant to our present inquiry. For Texas is without power to give extraterritorial effect to its laws . . . The significant question in this case is whether the full faith and credit clause has deprived Louisiana of the power to deny that the Texas award has the same binding effect on the parties in Louisiana as it has in Texas.
> "It is not, as the state court thought, a sufficient answer to the bar of the Texas award to assert that Louisiana has a recognized interest in awarding compensation to Louisiana employees who are injured out of the state . . . for Texas, the state in which the injury occurred, has a like interest in making an award . . . And in each of the cases we have cited, the state to which the judgment was brought had an interest in the subject matter of the suit and a public policy contrary to that of the state in which judgment was obtained. No convincing reason is advanced for saying that Louisiana has a greater interest in awarding compensation for an injury suffered in an industrial accident, than North Carolina had in determining the marital status of its domiciliary against whom a divorce decree had been rendered in another state . . . or Missis-

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[19] Miss Code §§ 6998-02, 6998-03 (1942).
[20] 294 U.S. 532 (1935).

> sippi in stamping out gambling within its borders . . . or South Carolina in requiring a parent to support his child who was domiciled within that state."

The court then went on and decided that whichever right of action ripened into a judgment first that was res judicata as to any suit brought in another state.

In other words, if a Mississippi employee went into Louisiana and was injured, brought a cause of action in Louisiana, then came back into Mississippi and brought another suit, whichever cause of action first became a judgment would be res judicata as to the other. The court also found in this case that the question of whether the state of the forum adopts and applies as its own the law of the state where the injury was inflicted or the law of the state where the contract of employment is made is a question of local law. This brings up a question which has been discussed and to which in Mississippi I cannot give an answer. Will a rule of law be enunciated which says that the law of the state which gives the employee the most benefit be the one that will be adopted? The only thing I can find that the Mississippi Supreme Court has had to say is in the case of *Orleans Dredging Co. v. Frazie*.[21] This case arose before the Mississippi Compensation Act was adopted. A contract of employment in Louisiana was entered into between citizens of that state for work on a dredge which subsequently operated in Mississippi where the employee was injured. It was held that the employee's remedy came under the Louisiana Compensation Act. The Court further held that any doubt as to whether the remedy of the employee injured within the state is under foreign compensation law or state law should be resolved in favor of the compensation law under which employee's right is certain. The Court said that although the Louisiana citizen was injured in Mississippi pursuant to a contract made in Louisiana, the Mississippi court would enforce the Louisiana remedy in Mississippi, although Mississippi did not have a compensation act. The Court also says that the Mississippi Court would recognize and enforce the Louisiana Compensation Act and says that it must do so under the case of *Bradford Electric Light Co. v. Clapper*.

If this is true, then the Mississippi Supreme Court should logically decide that where a Louisiana citizen enters into an employment contract with a Louisiana corporation qualified to do business in Mississippi and is injured in Mississippi, the Louisana Compensaton Act should be applied.

Gentlemen, I think that the lawyers of Mississippi have, without doubt, the opportunity of creating a body of compensation law which is superior to all. Being the last state to adopt the compensation act, you are in a position to avoid the pitfalls, the bulges and the strained constructions which have plagued the administration of the compensation acts in other states. You have the opportunity to pick the best of the jurisprudence which has been developed and apply it. If you do, it will be to the best interest of the citizen, the employer and the employee of Mississippi.

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[21]173 Miss. 882, 161 So. 699 (1935).

The next order of business was the election of officers. The following were duly elected:

Mr. Kenneth Franks, President

Mr. Everett Harper, Vice-President

Evecutive Committee:

Charles Jacobs, Northern District
W. O. Luckett
Elwyn Darden
James Robertshaw, Central District
Paul Nunnery
Robert G. Nichols
Owen Palmer, Southern District
Thomas Roberts
Charles Henley

Second Vice-President recommended to Senior Bar:

Lester Nate Williamson

The meeting of the Junior Bar Section then adjourned sine die.

APPENDIX A

COMMITTEE REPORTS

REPORT OF THE ADMINISTRATIVE LAW COMMITTEE

This committee commends to the Mississippi State Bar the thoughtful observations of Supreme Court Commissioner William N. Ethridge, Jr. in the publication "Modernizing Mississippi's Constitution," in that part of his work treating upon Administrative Agencies. We set forth certain of his views therein as our recommendation to the State Bar.

There are 103 Administrative Agencies in Mississippi today. As the government began to provide additional services for the people, such as education, hospitilization, conservation, and similar services, the administrative agencies developed without any organized plan. The Brookings Report in 1932 concluded that some of the chief defects in our system lay in the grouping of non-related functions in one office and scattering of related functions among many offices, overlapping of functions, and the general complexity of our administrative machinery.

The legislature gradually created boards, commissions and agencies to administer various regulations and services and the laws pertaining thereto. Our constitutional theory permits the creation of administrative agencies possessing delegated powers. The Legislature can delegate authority with the general limitation that it must lay down limits or standards within which the administrative grantees are to operate, although there is no constitutional provision for administrative legislation nor for administrative determination of causes. Commissioner Ethridge points out that this problem was not in existence in 1890, and that the courts have been very liberal in granting a wide field within which the agency might operate. He recommended that in a future constitution "Although such a constitutional provision could not be too specific, it should recognize the power of delegation within reasonable limits and attempt to define and limit this power to delegate functions to administrative bodies."

Another desirable provision for future constitutions is one providing some restriction on the number of administrative departments that can be created by the Legislature. Many states are ahead of Mississippi in abolishing existing agencies and regrouping them according to related functions. Mississippi would do well to follow some of these plans and regroup its agencies into smaller major departments under the responsibility of the Governor.

We have no constitutional provision guaranteeing the right of notice and hearing, or the right of appeal from decisions of administrative agencies, and while in some cases it has been implied by the courts from the due-process clause, a relatively small number of the agencies specifically give the right of notice, hearing, and appeal.

The conclusions drawn herein are that there should be reorganization of the many agencies, gathering them into a smaller group of related departments under the chief executive; that in future constitutions the power of the Legislature to delegate functions to agencies should be recognized with proper limitations; and that the right of notice, hearing, and judicial review should be required.

Further, we conclude as did the Administrative Law Committee for the year

1949 that all administrative agencies of the State of Mississippi should be required to file with the Secretary of State all rules and regulations, and amendments thereto, which have the force and effect of law; and all such rules should be so filed and recorded before becoming effective.

Respectfully submitted: Julian P. Alexander, Chairman.

REPORT OF AMERICAN CITIZENSHIP COMMITTEE

The President of the Mississippi State Bar Association very wisely appointed 82 local County Chairmen and Co-chairmen as sub-committees of this committee. It was the work of this committee together with all the local committees to recall to the citizens of our state the rights, privileges and responsibilities of being citizens of the United States of America and of Mississippi. Of necessity, the actual work done was by the local committees in each county. The work of the various committees has not yet been completed since much of the work has to do with students in high schools and is now in the process of being done. This report cannot be made in a complete form, therefore, but will be made from actual activities having already transpired, together with estimates of what will have been done upon completion of the program.

Early in the year in cooperation with the Citizenship Committee of the American Bar Association, the Superintendent of Education for the State of Mississippi was furnished with a list of all local county chairmen and requested to call upon them for any assistance they might render in connection with a citizenship program which the schools of our state might have. Literature received from the American Bar Association which might be helpful in this program has been distributed to those having need of it.

Complete reports have not been received by the General Chairman from all counties as yet, and those reports which have been recived were as of May 1st, 1951, and will not include all of the activities of the particular county involved. Thirty counties have sent in reports. We know that as of May 1, 1951, one hundred lawyers of our State had spoken to public or private groups on the subject of Citizenship. We know that it is fair to estimate that approximately 250 lawyers of our State have made such talks during the past year. We further know as a fact that at least 130 speeches on Citizenship have actually been made by lawyers. We can fairly estimate that approximately three hundred and fifty speeches have been made by lawyers all over the State. As stated above, these figures should be increased somewhat because of what has happened during the month of May. For instance, the figures above do not include twenty-nine speeches scheduled for the month of May in Neshoba County.

The number of speeches made in each county has varied from one lawyer talking to one group to twelve lawyers in Warren County talking to twenty groups. Wilkinson County seemed to have the next largest number of lawyers participating with eight lawyers talking to twelve groups. Jefferson Davis County also had eight lawyers participating. Hinds County had twelve talks made by three lawyers and twelve talks made by three laymen.

In Grenada County, the local broadcasting station was induced to contribute fifteen minutes of radio time per week for eight weeks. Every school in the County

devoted fifteen minutes of its school time to bringing talks arranged by the local County chairmen into the school room over the radio. Grenada County utilized persons from many walks of life to make these talks. Definitely satisfactory results are seen from this procedure.

In Hinds County an attorney has been given the responsibility of publishing a booklet on Citizenship. Various attorneys in the County will write chapters for the booklet which will treat of our State government, methods of elections, the democratic process, municipal and county affairs, taxation and business relations with the public governmental bodies. This pamphlet or booklet will be distributed to each student in the high schools of the county, and if the results warrant, will be made available to other counties also. It is expected that this pamphlet will be distributed in the near future.

The speeches which lawyers of our State have made were made before representative bodies, including all grade level of our public school system, church bodies, Chamber of Commerce meetings, Civilian Defense meetings, open forums, local bar associations, Boy Scouts, men's civic organizations and college students. Tallahatchie County, in addition to speeches, indoctrinated ten foreign nations students of Ole Miss for one week in American Citizenship.

Your chairman is happy to report in the light of the above that the lawyers of this State are doing more than their share toward reminding all of us of our heritage and our responsibilities. An effort was made to coordinate the efforts of the Association with those of Mrs. W. D. Cook, former President of the Mississippi Parent Teachers Association, along similar lines, but it was too late in the year for the two program to be meshed. It is recommended that any new Citizenship Committee contact Mrs. Cook at Meridian, Mississippi, so that a joint program might be possible or at least one wherein the efforts of each group will supplement the other.

Respectfully submitted: Harvey McGehee, Chairman; Sidney A. Smith, Jr., Secretary.

REPORT OF THE BUDGET AND FINANCE COMMITTEE

Your Committee has carefully examined the audit covering the past fiscal year, closing as of May 15, 1951, prepared and certified to by Dick D. Quinn and Company on May 25, 1951. The audit is on file with the Secretary of the Mississippi State Bar at its office in the Capitol Building at Jackson, Mississippi, and any one desiring details can consult it at pleasure.

We are glad to report that the financial affairs of the Mississippi State Bar have been carried on in an excellent manner, with the funds available. The high cost of living is definitely having its effect on the operation of our association, and it is becoming increasingly more difficult for the Mississippi State Bar to function properly and to continue its good work on our present annual receipts. Many important activities are curtailed because of lack of sufficient funds for the purpose. Especially has this been true as to the desired program of the Junior Bar Section.

The Committee notes with interest in this connection, that the Report of the Study Committee of the Mississippi State Bar, in Item III thereof, unanimously recommends that the Association request the Legislature to increase annual dues.

of its members from $5.00 to $10.00 per year. This matter was discussed at the Convention last year, during presentation of the Report of the Budget and Finance Committee, and was thereafter referred to the Study Committee by the Commissioners for a full investigation and its recommendation. The Committee feels that this recommendation is made in the best interest of the Mississippi State Bar, and that it should have the careful study of the members when presented.

However, the Committee must present a budget that is within the existing financial resources of our Association, and with this in mind, the Committee presents and recommends the adoption of the following budget for the fiscal year 1951-1952, which is substantially the same as the budget for the past fiscal year:

Secretary's salary	$2400.00
Mississippi Law Journal	3250.00
Junior Bar Section	600.00
Bar Commissioners' Expense	600.00
Committee expense (This item includes Memorial Services, Legislative Committee expense, and investigation and disbarment expense)	500.00
Travel allowance for Study Committee	150.00
General Office Expense	900.00
National Conference on Uniform State Laws	150.00
Expense for delegates to Judicial Conference	150.00
Miscellaneous expense	250.00
Total	$8950.00

The Committee would gladly recommend an allowance for travel expenses for all committees, but cannot do so for the reason that the revenues of our Association are clearly not sufficient to permit it. However, the Committee makes an exception, as it did last year, for the Study Committee, and has included an allowance for the Study Committee which should be ample to cover the expenses of at least one general meeting of that Committee. The Committee makes this exception because of the far-reaching importance of the work of this committee to the Bench and Bar and to the State Legislature.

The other committees can handle their work as heretofore by correspondence and at their own expense, and are heartily commended for their willingness to follow this course from year to year, without a murmur of complaint.

The Committee has included and recommends the same amount for the Mississippi Law Journal as for the past three years. It has been exceedingly difficult to spare this amount, but the Law Journal ranks among the best in the nation and deserves all the support our association can give it. The staff is operating the Journal as economically as possible under existing conditions, and must have this allotment if the Journal is to be maintained at its present high standard.

We have raised the allowance to the Junior Bar Section to $600.00 (being an increase of $100.00 over the allowance for last year), and wish that this allowance could be much more. However, the revenues under our existing plan of operation are clearly not sufficient to permit it. This allowance may be drawn upon as and when needed, as heretofore, by requisition of the President of the Junior Bar Section, on the Secretary-Treasurer of the Mississippi State Bar, and is to be expended by the Junior Bar Section as it or its officers may deem best, from time to time.

We urge all members who are delinquent in their dues to clear up their delinquencies, and strongly recommend to the incoming administration that it proceed as may be required to clear up delinquency of all members for dues owing by them for the past fiscal year and for all previous years. It is very necessary that all bar dues be paid if our Association is to function at its best.

Respectfully submitted: J. K. Travis, Chairman; William G. Hewes; L. Arnold Pyle.

REPORT OF COMPLAINT COMMISSIONER

This report is necessarily a short report, as I see it. It is a report of the action of the Complaint Commissioner and his assistant during the past year, and in order to go into detail, it would be necessary to call names and that might well prove to be embarrassing to some people. However, I am glad to report most of the complaints, after thorough investigation, were found to be groundless.

I, as your Complaint Commissioner for the past twelve months, was fortunate in that the President appointed an Assistant Complaint Commissioner, Honorable Bernard Callender of Columbia. I feel greatly indebted to Mr. Callender for the prompt and efficient manner in which he has handled the numerous complaints referred to him.

We have had filed with us numerous complaints against lawyers in practically every part of the State, some of whom were outstanding members of the profession. We have endeavored to handle every complaint that has been submitted to us to the best of our ability and in accordance with the rules of the Mississippi State Bar.

We have had about twenty-five complaints filed with us and have taken cognizance of every complaint, even though in some instances there may have appeared to be little or no merit in it; however, we have insisted that each complainant make affidavit to his complaint, as required by our rules, and support the same by other affidavits or documentary evidence whenever possible. And, in every case where there seemed to be sufficient merit in the complaint, we have called upon the attorney complained against for a reply, and I believe in each instance we have received reply, and I am happy to report that in practically all these instances we finally determined there was no merit in the complaint, with few exceptions, and there are some that are still pending.

REPORT OF COMMITTEE ON GROUP INSURANCE

Mr. President, members of the Association: your Committee, composed of Henry Barksdale, as Chairman, Hubert Lipscomb, Arnold Pyle, Ed White and I were appointed to look into the matter of group insurance for the Bar, and report to the Commissioners. We did that and reported to the Commissioners, principally, that we approved group insurance for the Bar, which means we can get such insurance as we want, hospital, health and accident, if needed or wanted, at wholesale rate. We recommended that to the Commissioners.

To be brief, this group authorized your President to appoint a Committee to select a plan, and when that plan has been selected, whichever it may be, as proper

in the judgment of the Committee, to then circularize the members of the Bar and see who wants to subscribe to it and take it. In that manner, we can get it at a cheap rate. A lot of work will have to be done, in order to determine what would be the proper plan. We think it is worthwhile and something the Bar should be interested in. All of you are familiar with group insurance and the benefits so derived.

So, it is the recommendation of the Committee, ladies and gentlemen, that this course should be taken, with authority in the Committee to select a group plan, to be determined—should be a purely voluntary matter—submit to the members who want to subscribe. Then, as I understand in a general way, if as many as 50 per cent want to take it, the plan goes into effect. In that manner, we can eliminate the red tape and give every member a chance to see what you can get under the group plan.

REPORT OF THE INSURANCE COMMITTEE

There are about three-fourths of a million people in the United States who are employed in the business of insurance directly; these people are well paid and themselves contribute to the progress of the communities in which they live.

The insurance companies have contributed largely to the building of our cities and their stabilization. Home builders and owners have benefitted most in this respect. Reserve funds are loaned on real property, mostly on homes. These loans are so amortized that the worker, the salaried man or woman can borrow funds with which to build a home and can repay the loan on such easy terms that they scarcely pay more to own their own home than they formerly paid in rent. The result is that better homes are built and more people have the satisfaction of security and comfort than formerly. These satisfied people make better citizens, which in turn strengthens the nation.

Policy contracts of life insurance now generally provide for loans against the policies themselves. In times of "tight money" these available loans are invaluable and bridge the gap both of the individual and of the community. Available when needed, the money which may be had by the policyholder at anytime, often saves embarrassment to the individual and furnishes the necessary finances to keep his business going.

We unhesitatingly say, that to a lawyer insurance is his best stabilizer. It has helped the financial status of the lawyer. We do not mean that employment by an insurance company or companies directly is controlling, but the fact that insurance is generally carried by the business and traveling public produces more business for the lawyer. It gives him money for his services at more regular intervals and this in turn engenders peace of mind. We have in mind a man of small means, no real financial worth, who went into a small business. He had to employ two or three men to assist in carrying on the business. Two of these men were accidentally killed. The employer carried insurance. As a result of a dispute as to responsibility lawyers were employed by both the claimants and the insurance company. On recovery by the claimants their lawyer was handsomely paid and the insurance representative received his fee.

Insurance has cut short much of the starvation period of the young lawyer and has given the profession an opportunity to progress without too much reliance upon

politics. A lawyer can now attain a reasonable degree of success without being elected to office; can look to business for employment; and does not have to keep his nose too regularly in musty vaults, making abstracts and endeavoring to read the handwriting of men who could not read what they themselves wrote.

There have been enough cases before the Mississippi Supreme Court for the law, as regards insurance and insurance policies, to have been reasonably well chartered. We feel constrained to say that the decisions of our court are well reasoned and of such clarity as to permit both the insurance companies and the insuring public to understand on what basis they are rendered.

The Legislature, recognizing the importance of insurance to the business world, has passed many statutes governing and regulating insurance in the State. Of course, where a statute has been enacted in regard to a particular phase of insurance, the statute controls, if constitutional.

Our court has held, and it is firmly established in Mississippi that "insurance is a matter of contract, and such contracts are creatures of voluntary assent or agreement between the insurance company and the insured."[1]

The terms of the contract may be stringent, nevertheless they will be enforced, unless, opposed to public policy or statute.[2]

But, the contract must not be ambiguous. If ambiguous, since the company chooses the wording of the contract, it will be construed most strongly against it.[3]

This is as it should be as it is commonly known that practically all who purchase insurance never read the policies and those who read them only understand plain language. Knowing this, the companies should use understandable phraseology in preparing their contracts. They should only use such language as is readily understandable.

The parties have the right to contract as they see fit and the courts will enforce insurance contracts as they do other contracts, even to the fine print therein, but, the fine print must be understandable.

We call attention to two of the most recent decisions of our Supreme Court.

In the case of *American Life Insurance Company v. Barnett*,[4] Judge Ethridge speaking for the court, it was held that statements made by the insurance company's agent were not sufficient to establish proof of intent to waive an exclusionary clause of the policy, and that there was no question of fact to be submitted to the jury. Judgment in that case was rendered by the Supreme Court.

In the case of *Paramount Fire Insurance Company v. Anderson*,[5] Judge Hall speaking for the court, it was held that information given to an employee of an agent of the company raised a sufficient issue of fact for submission of the case to the jury. The court in the one instance decided the question as one of law, while in the other the jury was permitted to make the decision.

The court has gone a long way in permitting reformation of the written contract of insurance by notice to the agent or statements by the agent. This, of course,

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[1] Cook v. Lamar Life Insurance Company, 156 Miss. 16, 125 So. 409 (1930).
[2] New Amsterdam Casualty Company v. Perriman, 162 Miss. 864, 140 So. 342 (1932).
[3] Germania Life Insurance Company v. Bolden, 100 Miss. 660, 56 So. 609 (1911).
[4] 51 So.2d 227 (Miss. 1951).
[5] 51 So. 2d 763 (Miss. 1951).

results from the fact that the companies scarcely ever talk with the insured by or through its directors or officers. The companies are usually in distant states and transact their business through salaried agents or brokers. After loss has occurred witnesses swear to conversations and the courts accept this character of testimony and permit juries to reform contracts thereon. In such cases the courts are exceedingly liberal to the insured and against the insurer. The agent making the contract for his principal, who is held by its actor.

The Supreme Court has recently had a case of reformation before it. We refer to the case of *Lititz Mutual Insurance Company v. Miller*,[6] wherein it was held that the policy would be reformed, on proper proof, to conform to the real intention of the parties.

The field of insurance is constantly broadening and adjusting itself in keeping with the progress of the times. We recently came in contact with litigation involving a life insurance policy, and where death has resulted to the named insured, who was killed in an aeroplane accident.

The particular policy had an exclusion clause, which excluded coverage where death resulted by reason of an accident accruing while the insured was piloting an aeroplane, or was a member of a crew operating an aeroplane or while he was assisting in the operation of the aeroplane—all where the aeroplane was in flight.

The insured was a pilot. He was in a small aeroplane in which another pilot was also riding. The plane struck an electric wire and plunged to the ground as a result of which both occupants were instantly killed.

There was no witness who could positively testify which of the two occupants of the plane was actually handling the controls at the time the plane struck the wire. There were witnesses who stated they saw the insured taxi the plane on the runway.

Statements of the insured, and of his companions, prior to the flight were found to be admissible as verbal acts and the condition and position of the bodies when removed from the plane after its destruction, all taken together, raised a question of fact for the jury, with the burden on the insurer who had the affirmative of showing that the insured was actually acting within the exclusion clause of the policy at the time the accident occurred, i. e. while the plane was actually in flight.

Before jury verdict, this case was settled. But, it is understood the jurors said they had heard the insured had paid his premium. That seemed to be all the jury was interested in.

In another recently reported case, the court held that a residence a quarter of a mile away from the insured dwelling, and on a ninety-five acre tract of land, was appertaining to the main residence and that the ninety-five acres was suburban property although it was six or more miles from the corporate limits of a town and was surrounded by cotton and corn fields.

From the foregoing it will be seen that the agreements and conditions of insurance policies are what the particular Judge, who decides the case, holds it to be, and his holding is the law until another Judge of different temperment passes on the question.

With automobiles as thick as ants on the highways, with aeroplanes buzzing

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[6] 50 So.2d 221 (Miss. 1951).

overhead, and with machinery doing the work formerly accomplished by man power, insurance is indispensable.

Verdicts are steadily climbing in size; business pays more of the freight for the insurance company cannot pay, unless it is first paid.

The Workmen's Compensation Law is new in Mississippi and could not operate other than by insurance. A social reform—the premium is charged up as expense of business and the general pool of employers makes it possible for all to operate without the danger of any individual being wiped out by calamity. Without insurance behind the employer the Act would be unenforceable, as individual operators, facing certain disaster, in case of accidental injuries, would be forced into bankruptcy or simply throw up their hands and quit. Because of insurance the Workmen's Compensation Law has not had the depressing effect on the practice of law which was anticipated, for the companies carefully investigate accidents and contest unwarranted claims just as before the Act went into effect. The Commission allows the lawyer who represents the claimant a reasonable fee and the insurance company pays the attorney who represents it. Also, the subrogation feature of the act has opened a field which had heretofore had little attention for the companies look to recovering their losses and some fine litigation results. This makes business for the lawyer.

There are many who are attempting to practice insurance law who have no law degrees and who have no license to practice law. Although it is a violation of the statute for a corporation to practice law, in many of the states corporate adjustment firms, without lawyers acting, are rendering legal opinions, deciding cases of liability and negotiating settlements. The American Bar Association has been and is considering this situation.

To the young lawyers your committee says that the practice for the insurance company and the practice against the insurance companies is a field which you should occupy. The work requires close application and unlimited energy. That should not frighten you away as the jealous mistress, the law, will exact close application and untiring energy in any of its branches.

One of the large representative companies has advised us that it pays a claim every fifteen seconds of every working day of the year. We take it that this company is no more liberal in settlements than other companies and when it is considered that there are a great number of companies doing business in the casualty line, it will readily be seen how many claims are paid every day and how many skilled men are required to handle this tremendous volume of business.

Gentlemen, in the Committee's opinion, the carrying of insurance by the business public and by the traveling public, has opened up a field to the lawyer which he should occupy, and which will assist him very much in his profession, both from the standpoint of giving him an opportunity to develop as a practitioner and from the financial standpoint as well.

Respectfully submitted: N. L. Snow, Chairman.

REPORT OF JUNIOR BAR SECTION

The Junior Bar Section indeed appreciates the opportunities of association and guidance furnished to its members by the Mississippi State Bar. This year marks

the fifteenth birthday of the organization of the Junior Bar Section, and we sincerely hope that the work of the Junior Bar Section will continue in the future.

Since the last meeting of the Bar here in June, 1950, the Junior Bar Section has assisted in the sponsorship of the Lawyers and Accountants Tax Institute at Mississippi Southern College at Hattiesburg, Mississippi. It is hoped that this Institute will become and continue to be an annual affair. This was under the chairmanship of W. Arlington Jones and Overton Currie.

In September, 1950, under the chairmanship of W. Jeff Hamm, the Junior Bar assisted in holding the memorial service in the Supreme Court of Mississippi for the lawyers and judges who died during the year.

In November, 1950, the Junior Bar Section, in connection with the Jackson Junior Bar and the Ole Miss Law School, cooperated in holding the fifth annual Mississippi Law Institute. This Institute is gradually gaining fame over this section of the country. Members of the Jackson Junior Bar Section are to be highly congratulated on the manner in which they are presenting for the benefit of the lawyers of this state programs continuing and affording legal education and information.

The Junior Bar Section, under the committee chairmanship of James Robertshaw, has assisted in the promotion of the T. C. Kimbrough Memorial Fund, a nonprofit-sharing, charitable organization set up to provide financial assistance for needy law students at the University of Mississippi. This fund is set up so as to provide for paid in memberships and, eventually, if sufficient funds are acquired they may be used for the payment of speakers at the various law institutes and bar meetings over the state.

Under the chairmanship of Lee B. Agnew of Jackson, Mississippi, the Junior Bar Section Committee on Unauthorized Practice of Law has investigated violations, as much as possible and as much as the finances would permit, throughout the state and has sent all banks, real estate agents, insurance agents, mortgage companies, justices of the peace and court clerks a resolution defining what is and what is not the practice of law.

A new committee on Unethical Practice of Law was set up under the chairmanship of Roland W. Heidelberg, Jr., and considerable work has been done and investigation made among the older lawyers in an attempt to work out a means best suited to get the younger lawyers practicing law started on the correct foot.

The Junior Bar Section has done what it could during the year in assisting in sponsoring a constitutional amendment to change the Supreme Court from six to nine members, and further has provided speakers in various communities over the state to make talks on citizenship as advocated by the American Bar Association, and in connection with the Public Information Committee under Julian P. Alexander, Jr., several radio skits and talks have been made advising the public of the services offered to them by the attorneys of the state.

The Study Committee of the Junior Bar Section, under the chairmanship of Dan H. Shell, has worked in conjunction with the Mississippi State Bar Study Committee, making recommendations for various changes in state laws.

The Legislative Committee of the Junior Bar Section, under the chairmanship of Robert Nichols of Jackson, realizing the difficulties encountered in the past in getting various bills sponsored by the Bar Association passed through the legislature,

has advocated a principle of advising fully the various legislators of the reasons for proposed bills besides the substance of them.

The question of the prohibition matter, put before the Association last year, has been expended in presenting to the whole Bar Association a questionnaire along the lines of that previously sent out to the Junior Bar. It is hoped that further work and investigation of this matter will bring some end to the unsatisfactory situation presently existing.

The Junior Bar Section has appointed on the Children's Code Commission of the State of Mississippi a member from the Junior Bar to assist in that most important work.

The Junior Bar Section has about completed a correct roster of the lawyers in the State of Mississippi, working with Mrs. Alice Nevels, the Secretary.

The following are recommendations that the Junior Bar Section believes in that should be continued:

(1) Dues for Mississippi Bar should be raised to $10.00 and the Legislature should be requested to pass such a bill.

(2) The President of the Junior Bar Section should be made a member of the Board of Bar Commissioners under the Unified Bar Act.

(3) The Lawyers and CPA Institute in Hattiesburg and the annual Law Institute in Jackson should be continued.

(4) In an attempt to provide better work, especially on Public Relations and Unauthorized Practice of Law committees, we believe the allotment to the Junior Bar Section should be raised to $1,000.00, if the Legislature authorizes the raising of dues to $10.00.

(5) Every lawyer in the state should be urged to take upon himself and urge upon other lawyers the duty of being certain that his name is listed with Mrs. Alice Nevels, Secretary of the Bar Association, as the list of members is incomplete at the present time. The incoming President of the Mississippi State Bar should write a letter to each Chancellor in the state asking that he direct each young lawyer admitted to practice to register his name and address with the bar secretary.

(6) The work of the Junior Bar Section on Prohibition repeal begun last year and recommended to the Mississippi State Bar should be continued, looking to some solution to the present unsatisfactory situation in our state.

(7) The work of the Junior Bar Committee on the Unethical Practice of Law should be continued further, in order to keep the Association fully informed of happenings along this line in the state and to assist young lawyers in getting themselves off to a better start.

Respectfully submitted: E. Cage Brewer, President.

REPORT OF MEMORIAL COMMITTEE
(COMBINED REPORT OF JUNIOR AND SENIOR BAR SECTIONS)

The Junior Bar Section joined with the Senior Bar in conducting memorial services for the deceased members of the Bench and Bar who passed away between September 1, 1949 and September 1, 1950. Services were held in the Supreme Court

Room in the New Capitol Building in Jackson on September 11, 1950. All six members of the Mississippi Supreme Court were present as were the families and friends of the members of our profession in whose memory the ceremony was held.

Chief Justice Harvey McGehee opened the proceedings on behalf of the Supreme Court. The late Judge L. A. Smith, Sr. delivered a short address eulogizing the memory of our deceased brethren, and the Honorable Quitman Ross, Chairman of the Memorial Committee for the Senior Bar, read the following resolution of sympathy:

WHEREAS, since September of 1949, The Supreme Judge of all men has called before Him thirty-four members of the Mississippi State Bar, and

WHEREAS, in keeping with the custom of our Association and the Supreme Court of the State of Mississippi, we here desire to pay humble tribute to the memory of our departed brethren of the Bench and Bar, and to have recorded upon the sacred scroll of the noble dead the following names of members of our profession:

Henry L. Austin, Jackson
Oscar Backstrom, Gulfport
Jeptha F. Barbour, Sr., Yazoo City
Jeptha F. Barbour, Jr., Yazoo City
Benjamin Franklin Bell, Starkville
R. E. Bennett (Judge), Meadville
Lonnie J. Broadway, Meridian
A. L. Brown, Rolling Fork
D. A. Burgin (Judge), Columbus
W. R. Cunningham, Booneville
Hindman Doxey, Holly Springs
Paul Farr, Prentiss
William Furnell, Detroit
Hanun Gardner, Gulfport
Hugh B. Gillespie (Judge), Raymond
Curtis Gober, Iuka
Thomas H. Johnston (Judge), Corinth
Orman Lanier Kimbrough, Greenwood
Carl Marshall, Gulfport
J. A. May, Sumner
J. A. McFarland, Sr., Bay Springs
A. F. McKeigney (Judge), Eupora
Robert L. McLendon, Vossburg
W. L. Mhoon, Jackson
John Arthur Mortimer, Belzoni
Harry K. Murray, Vicksburg
Walter Barnett Nicols, Grenada
Herbert Nunnery, Jackson
Greek L. Rice (Judge and Attorney General), Charleston
J. B. Stirling, Jackson
H. R. Stone (Judge), Decatur
Luther F. Tyler, Picayune
William L. Wallace, Gulfport
Frank O. Wynne, Merigold

WHEREAS, these deceased members of the Mississippi State Bar have rendered unto the people of our State and Nation their untiring and conscientious efforts, and have served with honor as attorneys and judges, devoting their talents faithfully to their chosen profession; NOW THEREFORE

BE IT RESOLVED by this testimonial that the Mississippi State Bar, by and through its authorized representatives assembled before the Supreme Court of the State of Mississippi, on this the 11th day of September, 1950, joins with the families and friends of these men in mourning the loss of those of our number whose lips have been forever silenced by the hand of the Almighty; that the loss of these men to our profession, to our State, and to our Nation is acknowledged with saddened and heavy hearts by those of us who remain to carry on in the shadows of their achievements; that we, as their friends and contemporaries, express our heartfelt sympathy to the loved ones of these our brethren of the Bench and Bar who have passed on into eternity; and

BE IT FURTHER RESOLVED that a copy of this Resolution be placed upon the minutes of the Supreme Court of the State of Mississippi and upon the permanent records of the Mississippi State Bar; and that a copy of this Resolution be transmitted to the family of each of our departed brethren in whose memory we here today have paused to remember.

Respectfully submitted: Quitman Ross, Chairman; Ross Barnett, Vice-Chairman; James A. Barnett; Lavell W. Brown; Dudley Conner; Holland Felts; Albert Gardner; J. V. Gipson; Jeff Hamm; Robert H. McFarland; H. B. Mayes McGehee; Luther Maples; George E. Maynard; J. Kenneth Riley; Gordon Roach; J. P. Stennis; Jack A. Travis; R. E. Wilbourn; E. B. Willims, Sr.

REPORT OF THE STUDENT EDITORIAL BOARD OF THE *MISSISSIPPI LAW JOURNAL*

General

The twenty-second volume of the *Mississippi Law Journal* will be completed with the publication of the October, 1951, issue. The *Journal* was organized in 1928, and since that time has printed many thousands of pages of legal literature. At the present time four issues per year are published; the circulation is approximately 2300 copies per issue. Subscribers include, for the most part, members of the Mississippi State Bar, students of the University of Mississippi School of Law, and libraries throughout the United States. In addition, there is circulation on an international level, copies of each issue of the *Journal* going to subscribers in England, Canada, China, Argentina, Hawaii, Mexico, the Philippines, Puerto Rico, and the Union of South Africa. The price of subscription is $4.00 per annum.

Issues Published Since the Last Convention

Since last year's Mississippi State Bar convention, the *Journal* has published four issues, the October and December, 1950, issues and the March and May, 1951, issues (the May, 1951, issue is not yet in the mails but should be within a short period). As our subscribers know, all these issues of the *Journal* were late in reach-

ing them. This delay was due primarily to printing difficulties. The *Journal* assures its subscribers that it will make every effort in the future to remedy this situation.

The Southern and National Law Review Conference

The *Journal* is a member of both the National Conference of Law Reviews and the Southern Law Review Conference. The Fifth Annual Meeting of the Southern Law Review Conference was held in Knoxville, Tennessee, on April 13 and 14, 1951. The University of Tennessee acted as host for the Conference, and Professor Sumner of South Carolina served as chairman. The *Mississippi Law Journal* sent three representatives to this conference, one of whom served as chairman of the panel discussions on Book Reviews. Participation in such conferences has proved beneficial both to the individual delegates and to the *Journal* generally.

The Index to Volumes 1-20

The cumulative index to Volumes 1 through 20 has been completed. The index is available bound with either a grey paper binding or a black buckram binding. The cost of the paper bond edition is $5.00 per copy; the cost of the buckram bound edition is $7.00 per copy. Anyone desiring copies of this index should send his order to "Business Manager, Mississippi Law Journal, Box 146, University, Mississippi."

The index is the result of three years of work and effort on the part of many student members of the *Journal.* Contained therein one will find the following different sections: Cumulative topic index of all leading articles, notes, and comments arranged with sub-sections and cross-indexed; table of cases cited; table of statutes cited; author index to leading articles; title index to leading articles; topic index to notes; index to case comments by style and subject matter; index to Bar proceedings for the 20 years in which the *Journal* has been published; index to the work of the Supreme Court; and a title index to books reviewed.

It is the belief and hope of the *Journal* that this index will be of great practical value to the members of the Bar. It makes available a convenient and efficient key to the many analytical articles contained in the *Journal.*

The printing of the index was financed by the University of Mississippi. All proceeds from sales go to reimburse the University, until the advance is liquidated.

Future Plans

The *Journal* is still seeking an economical method for the reprinting of out-of-print issues. The business manager is often called on to supply issues which have long since been extinct. The need for these out-of-print issues is recognized, and every effort will be made to see that they are made available in the future.

Through difficulties encountered, which were beyond the control of the editorial board, the expense of printing for the fiscal year 1950-1951, as shown in the financial report below, does not represent the normal year's printing costs. The size of each issue of Volume XXII was abnormally small, and in a normal operating year the cost of printing will be appreciably higher. Plans for the fiscal year 1951-1952 include the printing of issues of normal size.

Changes of Address

Many of the members of the Mississippi State Bar are failing to get their copies

of the *Journal* because these copies are being sent to the wrong address. The *Journal* is mailed by second-class mail, and there is consequently no provision for forwarding. If the copy is not claimed by the addressee, it is returned to University, Mississippi. It is urged that all members of the Bar promptly notify the *Journal* of any change of address. The address is Mississippi Law Journal, Box 146, University, Mississippi.

The Journal and the Bar

The primary consideration of the editorial board in publishing the Mississippi Law Journal is service to the Mississippi State Bar. In endeavoring to serve this purpose, we have attempted to publish material which would be both helpful and interesting. We have tried to select material for publication which is of current interest and which would, as a practical matter, be of benefit to the lawyer in the daily pursuit of his profession. It is our fervent wish that this is the result of our efforts.

The board solicits and will be grateful for any suggestions from the Bar in regard to the publication of the *Journal*. The members of the Bar are particularly invited to submit desirable subjects on which leading articles or student writing and research may be procured and published.

Respectfully submitted,

EDITORIAL BOARD

Tom Crews
John W. Dulaney, Jr.
Editors
W. Kelly Clifford
Business Manager
William F. Dukes
Asst. Business Manager

Ancil L. Cox, Jr.
Note Editor
R. O. Arrington, Jr.
Legislation Editor
William F. Goodman, Jr.
Nancy T. Wood
Case Editors

Clinton G. Herring
Book Review Editor

EXHIBIT "A" TO THE LAW JOURNAL REPORT
FINANCIAL REPORT OF THE MISSISSIPPI LAW JOURNAL

1950-51

Receipts

Balance in bank, July 27, 1950		$ 182.66
Appropriation, Mississippi State Bar		3,250.00
Law School Assessment		480.82
Sale of Back Issues	$ 519.85	
Less amount transferred to Back Issue		1.60
Printing Fund	517.25	
Sale of Subscriptions	$ 341.35	
Less subscription refund	3.60	
	$ 337.75	399.35
Plus subscription accounts receivable	61.60	

Sale of Advertising space	$1,016.31	
Plus advertising accounts receivable	152.50	
Plus advertising for May 1951 issue	290.00	
	$1,458.81	
Less advertising applied to fiscal year 1949-1950	35.17	1,423.64
TOTAL RECEIPTS		$5,739.07

(Exchange credit listed on books, $59.25)

Disbursements

Printing:		
Volume XXI, No. 4	$1,068.15	
Volume XXII, No. 1	1,159.39	
Volume XXII, No. 2	758.78	
Volume XXII, No. 3 (Estimated)	1,100.00	
	$4,086.32	
Plus freight-in paid by Law Journal	32.05	$4,118.37
Postage and Box Rent		109.33
Exchange and Banking Expense		5.45
Page in College Yearbook		50.00
Stationery and Supplies		98.54
Miscellaneous Office Expense		41.01
Fire Insurance on Back Issues		43.75
Stenographic Expense		16.40
Telephone Expense		120.86
TOTAL DISBURSEMENTS		$4,603.71
Estimated cash on hand July 1, 1951		1,135.36
TOTAL		$5,739.07

EXHIBIT "B" TO THE LAW JOURNAL REPORT
PROPOSED BUDGET FOR MISSISSIPPI LAW JOURNAL FOR 1951-1952

Receipts

Appropriation, Mississippi State Bar	$3,250.00
Law School Assessment	425.00
Sale of Subscriptions	350.00
Sale of Advertising Space	1,000.00
Estimated Balance Brought Forward	950.00
	$5,975.00

Disbursements

Printing:		
Volume XXII, No. 4	$1,325.00	
Volume XXIII, No. 1	1,325.00	
Volume XXIII, No. 2	1,325.00	
Volume XXIII, No. 3	1,325.00	
		$5,300.00
Exchange and Banking Expense		10.00
Postage and Box Rent		150.00
One Page in the Yearbook		50.00
Stationery and Supplies		100.00
Miscellaneous Office Expense		125.00
Estimated Balance at End of Year		240.00
		$5,975.00

REPORT OF PROCEDURAL REFORM COMMITTEE

Your Committee respectfully submits the enclosed Bill for consideration of the Mississippi State Bar, recommends its approval and its submission to the Legislature at its regular 1952 session. (Note: A copy of the Bill herein mentioned may be found in 20 Miss. L. J. 508 (1949).)

It will be noted that this is exactly the same Bill that has already been approved by the Mississippi State Bar several times and to the approval of which at the 1950 Annual Meeting there was only one dissenting vote.

The objection has been raised that this Bill is an attempt to infringe on the power of the Legislature. It is obvious that such contention is not correct because Section 3 of the proposed Bill provides that no rules submitted shall take effect until the Legislature has had an opportunity to pass upon such rules and that the Legislature has power to amend any rule, to enact new rules and to reject any and all rules.

It will also be noted that Section 4 provides for representation on the Judicial Council of trial judges, practicing lawyers and laymen and that the terms of the various members are staggered so that we shall never have an entirely new membership on such Judicial Council.

Another objection that has been made to the Bill in the past is that it is simply an attempt to slip over on the lawyers of Mississippi the Federal Rules of Civil Procedure. This is not correct for two reasons.

The first reason is that any rule which may be formulated will first be formulated by the proposed Judicial Council. On that Council will be nine (9) practicing lawyers. In addition to that, all proposed rules must be approved by the Supreme Court of Mississippi. Further, any and all rules formulated will be submitted to the Legislature.

Second, it is recognized by your Committee that, while some of the Federal Rules of Civil Procedure will be helpful in the practice in our State Courts, not all of them are adaptable to our state practice. In fact, your Chairman is opposed, and

will be opposed, to any attempt to submit the Federal Rules of Civil Procedure as they now stand, as the rules for practice in our State Courts.

Respectfully submitted: Phil Stone, Chairman; Edwin White; William Ford; Hugh Clayton; W. C. Keady; Sydney Smith, Jr.; C. C. Shields; Semmes Luckett; T. Y. Minniece; J. T. Lowe.

REPORT OF STUDY COMMITTEES

In accordance with the custom of the Committee followed for several years, a letter was written to every member of the Mississippi State Bar asking for suggestions as to any needed changes in the statutes of Mississippi affecting matters of particular interest to the legal profession. An excellent response was received and the Committee wishes to particularly thank all of those who made suggestions.

There were a number of meritorious suggestions which the Committee is unable to present at this time for the reason that the volume is too great to hope to successfully present all such matters to the legislature for action. Such matters have been retained in the files of the Committee and will be presented to the Study Committee for 1951-52 for further study and recommendation.

Three matters were particularly presented to the members of the Bar for consideration without recommendation by the Committee. The question as to whether or not the terms of Chancery and Circuit Judges should be changed from four years to eight years was answered in the negative, by a vote of 55 to 20. The other two items were approved and appear as Items I and II below.

The Committee recommends that the Mississippi State Bar approve the following suggested revisions of our statutes to the 1952 regular session of the Mississippi legislature, to-wit:

Item I. By a vote of 68 to 8 the proposal to amend Section 1481 of the Code of 1942 so as to permit a judgment over in matters of recoupment arising from contracts was approved.

Item II. By a vote of 51 to 30 there was approved a recommendation to the legislature for the adoption of an act whereby judges may be placed upon an inactive panel after 16 years of service and after reaching the age of 70 years upon reduced compensation, remaining available to assist other Judges in clearing dockets and to sit in special cases. This is along the line of the recommendation of the Study Committee of 1947-48, and the proposal was approved by the House of Representatives in 1948 but was defeated in 1950.

Item III. At the request of the Commissioners of the Mississippi State Bar, the Study Committee fully investigated the advisability of requesting the legislature to increase the annual Bar dues from $5.00 per year to $10.00 per year in order to provide sufficient funds for not only carrying on the routine business of the Association but active committee work in the interests of our profession within itself and in its relationship to the public. After reviewing the activities of similar state associations, the Committee unanimously recommended that the Bar request the legislature to increase the annual dues of the Association from $5.00 per year to $10.00 per year.

Item IV. As there is no statutory provision for annulment of marriages, and the

question of annulment is in confusion in Mississippi, the Committee felt that the matter should be clarified and made certain by a complete statute.

Item V. The Committee unanimously approved a statute permitting the taking of depositions of any witness or party to a pending suit prior to trial but only under reasonable safeguards such as the requirement that the depositions shall be taken only in the county where the suit is filed unless the parties agree otherwise; the depositions cannot be used in lieu of oral testimony except under certain particularly outlined circumstances, and the scope of the examination shall be limited under orders of court when desired.

Item VI. The Committee recommends that the adoption laws of Mississippi be completely revised and rewritten and that the proposed uniform adoption act be considered in connection therewith.

Item VII. The Committee recognized the fact that as there is no contribution between joint tort feasors the status of such joint tort feasors after rendition of a judgment against them is uncertain and that a reasonable and equitable statutory basis of the status and rights of such parties should be adopted. The Committee recommends the adoption of the Uniform Act Upon Contribution Between Joint Tort Feasors adopted by the National Conference of Commissioners of Uniform State Laws and approved by the American Bar Association, subject to such changes as may be desirable to fit into our Mississippi statutes. A sub-committee was appointed to perfect that act.

Item VIII. An amendment of Section 500 of the Mississippi Code of 1942 so as to provide an additional method of taking the testimony of absent witnesses and of proving a will when the witnesses are not within the state was approved, the paragraphs number (b) and (c) being the addition suggested to the present statute:

> "Section 500. Testimony of absent witness: how obtained. When any will shall be exhibited for probate, and any witness who attested the will shall reside out of the state, or be not found, either of the following methods may be used to prove the execution of the will, to-wit:
>
> (a) A commission may issue to take his or her deposition, as in other cases of non-resident witnesses, to which the will shall be attached; but before such original will shall be sent abroad for proof, the Clerk shall make and certify to a true copy thereof, and file the copy in his office.
>
> (b) Or, in lieu of sending the original will abroad for such proof, the Clerk may have made a photostatic copy of said original will and certify to same as being a photostatic copy of the original will and send said certified photostatic copy of said original will abroad, instead of the original will, and in which case, the Clerk shall file the original will in his office.
>
> (c) Or by proving the handwriting of a testator or testatrix and of any one or more of the subscribing witnesses to the will.

(Note: Amendment by the Bar to prohibit original will's being sent abroad and requiring that a photostatic copy be sent.)

Item IX. The Committee recommends that the statute concerning mechanics and materialmen's liens be amended so as to provide that laborers and materialmen who are employed in the drilling of oil and gas wells shall have a lien upon the equipment and other property of the contractor or owner utilized in the drilling of such well. This right would be enforced in accordance with the statutory remedy now existing with such additional provisions as might be required by the nature of the matter.

Item X. The Committee recommends an amendment to Section 8666 of the

Code of 1942 so as to require any attorney from another state to execute a non-subversive affidavit, and prohibit any attorney from another state from appearing or pleading in any court in the state if said attorney is a subversive person.

(Note: By amendment of the Bar, the following is to be added to the oath required to be taken: "I am not now nor will I hereafter be a member of any organization engaged in such an attempt to prohibit equal protection under the laws of the Constitution.")

Item XI. The Committee recommends an amendment of Section 877 of the Code of 1942 to take care of the issuance of bonds by railroads, public utility companies and other corporations or individuals having extensive holdings so that the bonds secured by bond mortgages may be payable to registered holders, whose names need not be disclosed, as well as payable to bearer.

Item XII. The Committee recommends the amendment of Section 745 of the Code of 1942 so as to extend the benefit of the two year limitation provided for therein to partition proceedings.

Item XIII. The Committee recommends that the legislature be petitioned to increase the amount of salary which may be paid to the attorneys for the Boards of Supervisors in the smaller counties in Mississippi and that the Study Committee for the year 1951-52 be authorized and directed to make specific recommendations to the legislature to carry out this resolution.

Item XIV. The Committee recommends to the new officers of the Association for the year 1951-52 that the American Citizenship Program which has been actively carried on in all of the counties of the state be continued for the year, and especially commend Gibson Witherspoon as President of the Mississippi State Bar and Chief Justice Harvey McGehee, Chairman of the Committee and the members of such Committee for the excellent work done during the past year.

Item XV. The Committee recommends that Section 1846 of the Code of 1942 be amended so that it shall provide that the names of all defendants living in one country *may* be included in the same summons.

Item XVI. The Committee recommends that Section 1269 of the Code of 1942 be amended so as to provide a reasonable method for the name of a minor to be changed, properly safeguarding the interests of the mother, father and child so that each will have an opportunity to be heard and the interests of the child will be protected by the Chancellor before whom such petition may be heard. It appears there is some doubt as to whether or not the present statute permits the name of the minor to be changed.

(Note: By vote of the Bar, this Item was rejected as superfluous.)

Item XVII. The Committee recommended that the Unified Bar Act be amended so as to make the President of the Junior Bar Section and the Vice-President of the Mississippi State Bar members of the Board of Commissioners of the Mississippi State Bar.

Item XVIII. The Committee recommends that, in order to prevent the unauthorized practice of law, Section 8682 of the Code of 1942 be amended so as to add after the sentence concerning the preparation of bills of sale, deeds of conveyance, deeds of trust, mortgages, contracts and wills, the following: "Provided, that any such instrument acknowledged in this state shall bear on its face the name of the attorney or law firm preparing the same, and in the absence thereof the

Chancery Clerk of any county in this state shall be prohibited from filing the same for record."

Item XIX. The Committee brings forward for the consideration of the Legislative Committee for the year 1951-52 the numerous recommendations of the Study Committees of the years 1947-48, 1948-49, 1949-50, which have been approved by the Mississippi State Bar and have not yet been enacted by the legislature. These matters should be considered in connection with the legislative program of the Mississippi State Bar at the regular 1952 session of the Mississippi Legislature.

A large number of meritorious suggestions were considered by the Committee and referred by it for further study and consideration to the committee to be appointed for the year 1951-52. Among these, special attention is called to the following:

(a) That there should be a complete revision of our statute with reference to receivership, setting up a complete method of the appointment of receivers, the administration thereof and the protection of the rights of all parties involved. A subcommittee has been working on this question and will have data available to be considered by the new Study Committee.

(b) That there be provided by statute an alternative remedy providing judicial review of the decision of administrative and quasi-judicial tribunals as a supplemental and alternative method of review not affecting the present provision for appeal or review set up by the numerous particular statutes involved. A sub-committee also has assembled data available for the new committee for further study.

Respectfully submitted, John C. Satterfield, Chairman; Justice Percy Lee, Vice-Chairman; Robert G. Nichols, Secretary; Senator B. H. Loving; Rep. Joe W. Hopkins; O. B. Triplett, Jr.; Judge Lester Clark; W. Arlington Jones; Claude F. Clayton; Edward J. Currie; Leslie Darden; Eugene Thompson; R. Pierce Phillips; Emmette P. Allen; Tom Watkins; Joe T. Brown; Judge Jesse Graham; Augustin Magruder; J. A. Covington, Jr.; William Bizzell; Judge J. M. Kuykendall, Sr.; J. H. Price, Jr.; Dugas Shands; Judge S. C. Mize; Robert Burns.

REPORT OF TAXATION COMMITTEE

This committee was appointed and organized for the purpose of enabling the practicing attorneys in Mississippi to properly and correctly answer this legal question:

A client walks into a lawyer's office on the 15th of December and says, "On September 1, I bought a lot and building for $100,000 and the deed provides 'the seller and buyer will prorate the taxes'; I paid $2,500 for the state and county taxes and $2,500 for the city taxes and here are my receipts covering said payments, but showing they are for the *'fiscal year.'* How much of this $5,000 am I due to pay and how much is the seller due to pay?"

Your Tax Committee consisting of some twenty-one members (the names appearing at the bottom of this report) are still uncertain or divided as to the answer to the above proposition.

We held a meeting of our committee in Hattiesburg, on March 30, 1951, at which there were present sixteen members of the committee and several invited

guests. At this meeting, Denton Gibbes of Laurel, presented an excellent analysis and discussion of "The State Fiscal Year"; and Winston Cameron of Meridian, presented a like thoughtful and analytical discussion of "The County Fiscal Year."

After extended floor discussions, the chairman was directed to appoint two special committees to formulate reports to the State Bar. Attached to this report is the report of the special committee of Denton Gibbes of Laurel, Winston Cameron of Meridian and Overton Currie of Hattiesburg, on Ad Valorem Taxation; and the report of Robert W. Hartford and L. L. Beacham, Jr., both of Jackson, and Jules A. Schwan of Biloxi, the committee on Income and Inheritance Taxes. These reports are submitted with the recommendation that they be referred to the Legislative Committee for proper handling with the next legislature.

Let us say to you members of the bar that if you are not already tax-minded, you ought to become so by realizing that each one of you and every one of your clients, currently has a per capita tax burden equal to $359 per year; or in other words, assuming five members to each family, each and every one of your clients is loaded with an annual tax burden of $1,795.

Your chairman gratefully acknowledges his indebtedness to each and every member of his committee for the wholehearted support he has received and their deep and helpful interest in the subject assigned to us. The chairman is especially indebted to Robert W. Hartford, L. L. Beacham, Jr., and Jules A. Schwan, members of committee on Income and Inheritance Taxes, and Denton Gibbes, Winston Cameron and Overton Currie, members of the committee on Ad Valorem Taxes.

ANNOUNCEMENTS

The public accountants, last year, promulgated and held a Tax Clinic or Institute at Mississippi Southern College and an invitation was extended to members of the bar to attend this course and participate in the discussions. The course proved both interesting and helpful.

It is planned to hold a like two-day course during the month of October—the exact dates to be announced later. This clinic will be conducted by some of the outstanding tax authorities of the country. We believe that the members of the bar will find this course very helpful and we strongly urge the attendance and full cooperation of the members of the bar.

Respectfully submitted: T. C. Hannah, Chairman; J. W. Cocke; Mrs. Cecil Rogers; W. Arlington Jones; Denton Gibbes; Guy Walker; Paul Griffith; Billy Montjoy; Jeff Hamm; Augustin Magruder; Jules A. Schwan; Winston Cameron; Nelson Taylor; Robert Hartford; John Griffin; Overton Currie; Lamar Beacham; Roscoe Cross; Harold Wren; Willie Lee McLane, Jr.; M. F. Kahlmus.

REPORT OF THE COMMITTEE ON THE UNIFORM COMMERCIAL CODE

Each member of this Committee was furnished with a copy of the proposed final draft of the Uniform Commercial Code as well as supplementary material promulgated since the May 1950 meeting of the sponsoring organizations. Each article was in turn assigned to different members of the committee for study, discussion, report, and recommendation. We regret to report that it has been impossible

to have meetings of the full committee. At the same time, your committee desires to submit this its report and recommendation.

In view of the comprehensiveness of the assignment, it would be impossible for your committee to make a detailed report. Suffice it to say that the scope of the Code covers the entire area of commercial law. The present status of the Uniform Commercial Code and the desirability of its adoption has already been reported to the bar in the address of our President and that of the Hon. J. Francis Ireton of the Baltimore Bar.

If the Code is adopted by a substantial number of the states, it would affect our whole economic field. For that reason and for others, its study should be undertaken with care and considered judgment. Therefore, it is recommended that further time be accorded for the study of both the policy and the provisions of the Code. This additional study should be undertaken by this association's legislative committee and also by business groups such as the Mississippi Banker's Association. This recommendation simply follows the resolution adopted at a meeting of the Council of the Section of Corporation, Banking and Business Law of the American Bar Association on May 11, 1950. This resolution further suggested that the draft not be submitted to state legislatures until 1953.

As the Act itself states, "One of the main purposes is to make uniform the law among the various jurisdictions." Uniformity is desirable in view of our present day pace of commerce.

The Code deserves the careful study of our legislative committee, our legislature, and every member of this bar. Its enactment will have far-reaching results and create many changes in our historical concepts in this important field of law.

Respectfully submitted: Earl Thomas, Chairman; David Welch, Vice-Chairman; Warren Ludlam, Jr., Secretary.

REPORT OF THE CODE STUDY COMMITTEE (JR. BAR)

As has been true in previous years, your Junior Bar Committee has worked in cooperation with the committee of the Senior Bar in studying general statutes and conditions which, in the opinion of the Committee, should be amended or repealed or new legislation enacted. Most of the recommendations on the part of the Junior Bar Committee are incorporated in the report of the Senior Committee which will be given at a later date during this convention.

Your committee, however, does have some specific matters it wishes to call to the attention of the Junior Bar Section and makes the following recommendations, to-wit:

1. Under the present garnishment statutes, and the rulings of the Supreme Court based on such statutes, it is relatively impossible for a judgment creditor to obtain any satisfaction of his judgment as against the judgment debtor where the employer of the judgment debtor wishes to cooperate in assisting the judgment debtor to evade satisfaction of the judgment. It is recommended that a complete revision be made of the garnishment statutes so as to give to judgment creditors adequate and proper relief through the processes of garnishment.

2. Your committee recommends the enactment of proper statutes to clarify the

confusion existing as to divorce and annulment in Mississippi. In this connection legislation was proposed which would specifically establish grounds for divorce and grounds for annulment with proper savings clauses as to issue from such marriages. This legislation was introduced at the last session of the legislature but was not reached prior to adjournment.

3. Your committee favors the enactment of statutes providing for an imparlance day in the Circuit Courts and appropriate legislation authorizing the Circuit Judges to effectively render default judgments during vacations and on such imparlance days.

4. The committee favors amending Section 1523 of the 1942 Code so as to give the Circuit Judge during vacation times the power, under appropriate circumstances, to transfer causes to the Chancery Courts. The committee observes in this connection that legislation is sorely needed to increase the powers of Circuit Judges generally during vacation in order to expedite procedures in the Circuit Courts.

5. Recommendation is further made that Section 753 of the 1942 Code be amended so as to limit the period in which an appeal may be taken changing the statute to read three months instead of six months as now provided. It is further recommended that the savings clauses concerning minors and persons of unsound mind should be eliminated entirely.

6. Your committee recommends the enactment of uniform statutes concerning the matter of restitution in connection with illegal contracts.

7. The committee recommends active steps be taken to effect the enactment of a statute specifically defining and setting up the manner in which to compute relationship under the civil law as relates to descent and distribution.

8. The committee recommends enactment of statutes with reference to registration of motor vehicles as to which owners are residents of the State of Mississippi. The committee follows the recommendations of the 1949 Convention that such statutes should be patterned after those now existing in the states of Texas, Missouri and Illinois. In view of the uncertain condition as to titles to vehicles in this state and the easy manner by which fraudulent sales are conducted with reference to motor vehicles, the committee feels that protective laws with reference to registration of motor vehicles and appropriate title certificates for same would definitely be of advantage to the citizens of this state.

9. The committee favors an amendment to Section 3680 of the 1942 Code relating to periods of redemption in tax sales for special improvements so as to reduce the period from three years to two years. This recommendation is made on the theory that uniformity as to redemptions should be favored.

10. The committee favors amendment of House Bill No. 529 of the 1948 legislature so as to require the filing of an answer within a short period of time following the service of process. The committee points out in this connection that under the terms of the statute as written it would appear that a defendant may file a motion for security of costs or motion for bill of particulars or other dilatory motion and take no further action in the litigation until the convening of the term of court. This is the background for the prior recommendation of this committee that there be an imparlance day with additional powers granted to the Circuit Judge to enter such orders as would expedite the procedures of the trial of the case, consistent with due process and granting a reasonable time to all litigants to have their day in court.

11. The committee recommends a revision of the receivership statutes of our state.

12. The committee urges the enactment of statutes calling for recording of conditional sales contracts. In view of the lack of uniformity of our statutes, it is now possible for a person with fradulent motives to dispose of property under which conditional sales contracts are existing with the purchaser subsequently ascertaining that the purported seller did not have title at all resulting in extreme hardship in some instances.

13. The committee favors an amendment to Section 9821 of the 1942 Code so as to reduce the period of back assessment of ad valorem taxes from fifteen to five years.

14. The committee favors providing by special statute that where a cause is lawfully set by the Chancellor in vacation and no contest is filed, that the Chancellor, after a passing of thirty days time, may be allowed to render a decree on any day thereafter.

Respectfully submitted: Dan H. Shell, Chairman.

REPORT OF EXECUTIVE COMMITTEE (JR. BAR)

The Executive Committee would like to recommend:

(1) Dues for Mississippi Bar should be raised to $10 and the Legislature should be requested to pass such a bill.

(2) The President of the Junior Bar Section should be made a member of the Board of Bar Commissioners under the Unified Bar Act.

(3) The Lawyers and CPA Institute in Hattiesburg and the annual Law Institute in Jackson should be continued.

(4) In an attempt to provide better work, especially on Public Relations and Unauthorized Practice of Law committees, we believe the allotment to the Junior Bar Section should be raised to $1000, if the Legislature authorizes the raising of dues to $10.

(5) Every lawyer in the state should be urged to take upon himself and urge upon other lawyers the duty of being certain that his name is listed with Mrs. Alice Nevels, Secretary of the Bar Association, as the list of members is incomplete at the present time. The incoming President of the Mississippi State Bar should write a letter to each chancellor in the state asking that he direct each young lawyer admitted to practice to register his name and address with the Bar secretary.

(6) The work of the Junior Bar Section on prohibition repeal begun last year and recommended to the Mississippi State Bar should be continued, looking to some solution to the present unsatisfactory situation in our state.

(7) The work of the Junior Bar Committee on the Unethical Practice of Law should be continued further, in order to keep the Association fully informed of happenings along this line in the state and to assist young lawyers in getting themselves off to a better start.

REPORT ON THE FIFTH ANNUAL LAW INSTITUTE (JR. BAR)

The Jackson Junior Bar Association is pleased again to report that its 5th Annual Law Institute was a success. As you know it is a non-profit undertaking co-sponsored by the Jackson Junior Bar Association and the Ole Miss Law School. On our last Institute we showed a net profit of approximately $18 which was ideal. We don't want to lose any money, but neither do we care about making any. Many of you were in attendance at the Institute. If the comments that came to us were typical, everyone in attendance enjoyed themselves and derived some benefit. Our program was spread over two days. All day Friday was devoted to taxation. The morning session devoted itself to Gift and Estate taxation problems, and the afternoon session discussed "Legal Problems in Tax Returns." The Saturday morning period heard a panel discussion on Chancery Court Procedure by four of the state's outstanding authorities on the subject. Perhaps the outstanding features of the entire Institute was the Friday night banquet. Honorable Earl Thomas presided and Major Frederick Sullens introduced the featured speaker, Mr. Mark Ethridge, distinguished journalist. Mr. Ethridge talked for over an hour on foreign policy to the most attentive audience I have ever seen. To my knowledge there was not a person present that wasn't extremely impressed by the views of this expert on foreign policy. The speech was the subject of editorials in both Jackson papers.

I would like to thank those of you that furnished assistance without which the Institute could not have been a success. To our President, Cage Brewer, and to Gibson Witherspoon, President of the State Bar, we owe a debt that is immeasurable. To the members of the Jackson Junior Bar Association and the faculty of the Ole Miss Law School that served on the Law Institute Committee, goes the credit for a successful Institute.

So much for the past. A new Institute is coming up.

The Chairman of the coming Institute will be Robert Perry, whom most of you know. He had hoped to be here at this time to make a brief announcement, but in his absence he requested me to state that within the next few weeks a letter of announcement of the Institute will be sent to every member of the Bar. Enclosed in this letter will be a post card listing suggested subjects for discussion. The program of the Institute will be built entirely on the results of this poll, and therefore, he would appreciate you giving careful consideration to the subjects that you would like to have discussed and return the card with your choice indicated as soon as possible. He hopes to build an outstanding program around the desires of a majority of the members of the Bar.

It has been a pleasure and an honor to appear before you at this time, and we of the Jackson Junior Bar Association expect to see all of you in Jackson this fall.

REPORT ON FIRST ANNUAL LAWYERS' AND CERTIFIED PUBLIC ACCOUNTANTS' TAX INSTITUTE (JR. BAR)

The First Annual Lawyers' and Certified Public Accountants' Tax Institute of Mississippi, held on the campus of Mississippi Southern College at Hattiesburg, Mississippi, on August 18 and 19, 1950, had 125 people in attendance and was generally considered by all as a great success.

A registration fee of $12 was paid by the participants and this amount included

housing, social hour, banquet and all lectures and discussions. After all expenses of the Institute were paid there was an unused balance of $400 which is going to be used to defray part of the expense of the Second Institute which will be held in October 1951 on the Mississippi Southern College campus.

All sessions of the Institute were held in the air conditioned auditorium on the Mississippi Southern College campus with many outstanding authorities in this field participating.

The Junior Bar Section of the Mississippi State Bar Association was among the organizations co-sponsoring the Institute and there was no financial liability incurred by the Junior Bar Section.

The executive officers of the 1950 Institute were W. Arlington Jones, President; James S. Albritton, Vice President; and Sam B. Tidwell, Executive Secretary.

The October 1951 Institute promises to be beneficial and of even greater success and it is hoped that many members of the Junior Bar Section will find it possible to attend.

Respectfully submitted: Overton A. Currie.

REPORT OF THE LEGISLATIVE COMMITTEE (JR. BAR)

In view of the fact that the Mississippi State Legislature assembled neither in regular nor special session during the past year, the program of the Legislative Committee was essentially that of planning for the work with the coming 1952 regular session of the State Legislature.

Whereas many of the bills recommended by the Study Committee for passage by the State Legislature died either on the House calendar or in Senate Committee, your committee is of the opinion that many of these changes or additions to our statutes merit re-presentation to the Legislature at the next session. Your committee has a list of these Bills, and intends to see that each of them is placed in the proper hands at the start of the legislative session of 1952.

Your committee recommends to the Bar that a list of proposed Bills, as approved by the Study Committee, be mimeographed and the same mailed to various members of the Legislature prior to the convening date of the 1952 session. This list should be accompanied by a brief explanation of each Bill pointing out the necessity of its passage.

Your committee recommends that the incoming President of the Junior Bar direct the members of the Legislative Committee which he will appoint to work in close liaison with the Study Committees of both the Mississippi Bar and the Junior Bar Section, and with the Mississippi Bar Legislative Committee. Whereas this committee is extremely impressed with the work of previous Legislative Committees, we are of the opinion that a higher percentage of the Bills presented to the Legislature would result in favorable action if a more concentrated effort were made to explain to the Legislature just why it is necessary for our statutes to be changed or amended.

Respectfully submitted,

REPORT OF THE PUBLIC RELATIONS AND INFORMATION COMMITTEE (JR. BAR)

The present committee on Public Relations and Information is the same committee serving during the year 1950. In our last years report we concluded that radio afforded an excellent medium for our efforts if used in a series of damatizations to illustrate various aspects of our service to the public. Much of the ground work has been laid in the preparation of script and working out arrangements with the various radio stations. We now make the following recommendations to the Junior Bar Section:

(1) That the incoming committee contact this committee Chairman in order that the past work be available.

(2) That the Public Relations and Information Committee keep close contact with the activities of the Junior Bar Conference of the American Bar Association, in order that programs may be coordinated when having a nation-wide interest, and if possible that a committee member meet at least once during the year with the Chairman for the Public Information Program of the Junior Bar Conference of the American Bar Association.

(3) That this committee keep close contact with the Legislative committee in order to publicize proposed legislation.

(4) That the incoming committee have among its members two of the present committee members in order to insure continuity of work.

Respectfully submitted: Julian P. Alexander, Chairman.

T. C. KIMBROUGH MEMORIAL FOUNDATION COMMITTEE (JR. BAR)

At the last annual convention, upon the conclusion of the report of the New Projects Committee of the Junior Bar Section, the proposal to create a revolving loan fund to assist worthy law students in completing their legal educations, and for other purposes related to the advancement of the study of law, was adopted, and a joint committee composed of representatives of the School of Law, University of Mississippi, the Law School Alumni Association, and the Junior Bar Section appointed to place the proposal into operation.

Personnel of the joint committee, appointed and empowered to take such action as was necessary to place the plan into operation is: Representing the University of Mississippi, Dean R. J. Farley of University, and Judge W. N. Ethridge, Jr., now of Jackson; Representing the Ole Miss Law School Alumni Association, James Eaton of Gulfport, W. C. Wells, Jr., of Jackson, Guy Mitchell, Jr., of Tupelo, and Edward Brunini of Jackson; representing the Junior Bar Section, Joe Wroten of Greenville, R. W. Heidelberg, Jr., of Hattiesburg, and myself.

The joint committee met twice in Jackson, Mississippi, on September 25th of last year and again on April 23rd. As a result of the joint action of the members of this committee, we have organized and obtained a charter for a non-profit, charitable corporation, known as the T. C. KIMBROUGH MEMORIAL FOUNDATION. In addition, we have drafted tentative by-laws. Both the charter and the by-laws have been reproduced and copies will be available for distribution at the meeting of the Junior Bar Section.

Your committee, meeting with the other representatives, carefully considered the advisability of holding the corporate organizational meeting, adopting the by-laws, electing officers, and presenting a finished product at the annual convention. However, although we felt such action might be within the scope of the powers delegated to us, it was the consensus of opinion that such action on our part might conceivably be taken as presumptous, and we felt further that more people than ourselves should have a voice in selecting the initial board of directors and electing the initial officers. We felt those posts to be genuine honors, and hesitated to assume the responsibility of designating the persons who were to receive them.

Succinctly, the plan adopted calls for a charitable corporation to be composed of life members who have donated $100, or more, to the foundation, to be governed by a board of directors of fifteen men, elected on staggered terms, five new directors to be selected each year. Terms of membership, of course, are governed by the laws of the state with respect to charitable corporations.

The principal work of the corporation is handled through three main committees: a Loan Committee, charged with the responsibility of selecting persons from the applicants to receive loans from the foundation, and to determine the amounts and kinds and terms of the loans; the Finance Committee, charged with the investment of the foundation funds, and the responsibility of indicating to the loan committee, how much is available, when; and, finally, the Promotional Committee charged with the responsibility of soliciting funds.

The corporate powers are broad enough to permit, in the discretion of the Board, use of foundation funds in connection with sponsoring special speakers for the education of practicing members of the Bar at such functions as the annual Law Institute, or at the annual convention.

Respectfully submitted: J. Robertshaw, Chairman.

REPORT OF THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE (JR. BAR)

We have throughout our lives been familiar with an expression which came from the lips of the novelist and humorist, Mark Twain, "Everybody talks about the weather but nobody does anything about it"; likewise throughout our lives at the Bar, though relatively short, we have "griped" and complained about the unauthorized practice of law and unethical practices, which exist throughout the eighty-two counties of the State of Mississippi, but none of us ever do anything about it.

Many complaints have been received during the past year by your Committee from Attorneys, but when it comes to the actual prosecuting of such violators, we are not willing to exert our best united efforts to vigorously prosecute. We do not stand solidified in this respect as should we in order to uphold our profession. Complaints have been to the effect that there are individuals who are not licensed attorneys who are depriving us of what should be ours. The following depicts the nature of the many complaints which have been called to the attention of your Committee during the past year, complaints made by lawyers in every part of the State;

In one County, for instance, a young lawyer was amazed to discover that it was

the consensus of opinion that an instrument conveying real property was not legal unless it was prepared by the Chancery Clerk.

Many complaints have been received by your Committee concerning the acts of our Justices of the Peace in handling cases, giving advice, etc. in a regular attorney-client relationship.

Complaints have been received by your committee with regard to Title Insurance Companies with respect to circular letters which are being distributed concerning the closing of loans at special rates which are below the usual fees charged by us for such services; it has been called to our attention that all such violators do not have a license to practice law, but worse still some lawyers who derive their chief source of revenue from employment as officials or agents of Title Insurance Companies are in essence using such device to solicit business, and as a consequence we practitioners who do not have any other source of revenue are suffering and as time goes by, practically all of the lucrative law practice afforded through the medium of closing real estate loans will be taken from us, will be usurped by title insurance companies. However, when a complaint is received by your committee and the necessary co-operation is sought, that is usually the finis of the particular case and no prosecution follows. If we cannot stand united, ready, willing and able to the interest of our profession to pursue the prosecution of such offenders, then we have no right to complain—our "gripes" are not justified.

It is most urgently recommended by your committee that in view of the serious injury that is being sustained that a copy of this report be submitted to the Legislative Committee of the Junior Bar Section and that the unauthorized practice of law committee give every assistance to the legislative committee during the next year in an effort to remedy the spreading disease by legislative enactment.

We feel as though the matter relative to the complaints concerning actual members of our profession who are using somewhat unethical means as referred to above to procure business is a matter which should be dealt with by the unethical practice of law committee and not for this committee, and a copy of this report should therefore be submitted to that committee.

Bear in mind that these are complaints of members of the Junior Bar Section of the Mississippi State Bar and such complaints were conveyed to this committee and we feel it our responsibility to place them before you.

A letter, enclosing a copy of the resolution which was approved by the Junior Bar at its 1950 Convention, was forwarded by your committee to all the Chancery Clerks of the State of Mississippi, to all the Circuit Clerks, to 604 Justices of the Peace, to 103 members of Mississippi Real Estate Association, 264 Banks (including branches) and to 4 title companies, constituting a total mailing list of 1139.

It was decided by the committee to wait until the week before the 1951 Convention to mail said letters in order that the matter might still be fresh in our minds. Doubtless many of you have received letters or telephone calls regarding this mailing. Some of the letters received by this committee are attached hereto together with our reply.

It cost the Mississippi State Bar Association nearly $150 to send out the letters and resolution, and it is urged most earnestly and sincerely that each of you stand behind the order which you gave to this committee at the Convention last June 21st; and if and when someone contacts you with regard to the letter and resolution let them know, of course, in a tactful, but above all in a stern manner that it means

just what it says—that those engaged in the plumbing and similar businesses will raise hell with anyone who attempts to infringe on their trade without the proper license and we all know what would happen to one attempting to practice medicine without a license, and that we as members of the legal profession, certainly one of the most dignified or esteemed professions, have a right to uphold that profession in a similar manner. Are we not as proud of what we have chosen for our life's work as those trades and professions mentioned above.

Yes, we "fuss" and "cuss" about this thing referred to as unauthorized practice of law, this element which is eating into and breaking down our opportunities of earning a livelihood in our profession, and it is my observation after discussion of this subject with many of the older members of the Bar of our State that "fussing" and "cussing" have been abundant for the past 35 years and that the actual measures taken to curtail the growing fungi have been most remote. The time has come when we must stand united, ready and willing to exert our best efforts to prosecute all such persons guilty of the unauthorized practice of law when such facts are made known to us, not only in the interest of upholding our profession of which we are, or should be, most proud and truly the most honored profession which could be pursued, but, also, in the best interest of the people of the State of Mississippi. We should not let political concessions, and other personal motives, obstruct our standing fast with respect to the prosecution of those cases of unauthorized practice which are brought to our attention—the plumbers, electricians, barbers and the like stand ready to treat those who attempt to carry on their trade in an illegal cause; why should not we, who are engaged in the highest of professions known, likewise stand eager to deal justly with violators of the sort mentioned herein—the task cannot be left to one man or a small group, it calls for the whole-hearted cooperation of all of you as members of our Association and profession—it is useless to spend our money in circulating resolutions and the like if we fail to follow up in the manner required to abate the existing circumstances.

Respectfully submitted: Lee B. Agnew, Chairman.

REPORT OF THE COMMITTEE ON UNETHICAL PRACTICE OF LAW (JR. BAR)

At the initial meeting of the Executive Committee of the Junior Bar Section a discussion was had regarding the existence of unethical practices on the part of a few members of the Bar and of the duty of the Bar Association with reference thereto. It was decided unanimously that there should be a Committee within the Junior Bar Section to investigate the possible courses of action available to the Junior Bar Section to bring about an elimination of as much of this type of practice as possible. Your President felt it of sufficient importance to designate the entire Executive Committee as your Committee on unethical practice.

The function of the Committee has been entirely one of inquiry and study. Letters were written to approximately fifty of the leading attorneys throughout the State. For the most part these attorneys were men of outstanding ability and long years of experience, although certain selected younger members of the Bar also were contacted. These lawyers were chosen from every part of the State in an effort to get a comprehensive cross-section of the thinking of the leading members of the Bar. These letters requested that the selected attorneys give the Committee sugges-

tions as to what should and could be done by the Junior Bar Section to raise the ethical standards within our Bar. The response was, indeed, gratifying. We found generally that there was a feeling that the Committee had undertaken a much-needed, though admittedly difficult, job. Many valuable suggestions were made and your Committee has carefully studied these suggestions together with ideas of its own, and as a result has reached the following observations and conclusions, to-wit:

Your Committee wishes to make it unmistakably clear in the beginning that it does not think that the standard of ethical and moral conduct of the Bar generally is bad, nor does it feel that the ethics of the legal profession generally is on any lower plane than that of other professions. On the contrary, your Committee feels that generally lawyers in our State are possessed of the highest qualities of honor and integrity. Your Committee recognizes, however, that there are some among our numbers who for various reasons fail or refuse to conduct their professional activities in strict obedience of the recognized rules of ethical behavior, and it is toward the elimination of this misconduct on the part of these few that your Committee is directing its activities. To fail to see and admit that there are violations of the rules of ethics on the part of some members of the Bar is a failure not only of being realistic but is a failure to fulfill our duty to the other members of the Bar and to the public.

Your Committee is convinced of the truth in the statement of Sharswood, who said:

> "There is perhaps no profession after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. There is certainly without any exception, no profession in which so many temptations beset the path to swerve from lines of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as moral courage, which belongs commonly to riper years. High moral principle is the only safe guide; the only torch to light his way amidst darkness and obstruction."

Your Committee feels that it is the duty of this association and of the individual members thereof not only to conduct ourselves in accordance with the high ideals thus enunciated, but also to demand of our associates that they do likewise to the end that the Bar will fulfill its obligations of trust and confidence and maintain and earn respect of the public which it serves.

The one thought which appeared in more of the responses to the letters sent out than any other thought, was that the most good toward raising the ethical standards of the Bar can be accomplished in the long run by raising the educational and moral standards for admission to the Bar. Although admittedly this will not bring about any immediate change, your Committee feels most strongly that the educational and moral standards for admission to the Bar should be raised substantially, and in this connection it feels that not only the requirements for legal education should be raised, but the requirement for a liberal pre-law education also should be raised. In this connection your Committee wishes also to make it unmistakably clear that it does not have any desire to prefer one law school over another, nor to censure any law school for the sake of censure or because of any past school affiliations. It feels, however, that the standard should be set high and that all schools should be required to measure up to the standard thus set.

In connection with the subject of education, your Committee feels that more emphasis should be placed upon the study of ethics in our law schools than has been

placed heretofore so that when a student is graduated from our law schools he will be thoroughly saturated with high ethical ideals and with precise knowledge as to specific practices which are to be condemned.

It is to be observed that in the past few years little or no emphasis whatsoever has been placed on the subject of ethics at our Bar meetings. Your Committee feels that the subject of ethics should be one of continual discussion year in and year out at our State Bar meetings and in the various local Bar meetings throughout the State. The subject of ethics should be constantly before the Bar in the form of speeches at Bar meetings, discussions, open forums and the like, and that these discussions should not be limited to the general statements of ethical principles but be broadened to include discussions of specific practices so that all members of the Bar, and especially the younger ones, may be thoroughly familiar with what conduct is to be condemned.

Your Committee feels that "Rules of Professional Conduct of the State Bar of Mississippi" adopted by the Board of Commissioners on May 30, 1932, and approved and adopted by the Mississippi State Bar on September 1st and 2, 1932, contain a generally adequate standard of professional conduct, but it has learned that many members of the Bar do not have a copy of these rules and, therefore, your Committee feels that steps should be taken to insure that every member of the Bar is furnished with a copy of these rules for his study.

It has been suggested and your Committee thinks well of the suggestion that the various local associations, with the help and coordination of the State Association, give publicity to discussion of ethical practices so that the public may be informed as to what practices are deemed unethical and the public should be advised that any attorney who engages in such practice is not worthy of the trust and confidence of the people, and moreover that the people should not insist that an attorney engage in such practice on their behalf. The type of publicity which your Committee has in mind would be a series of short newspaper articles or radio speeches dealing with specific practices and not with the general condemnation of unethical practice. Of course, in any such publicity it should be made clear that in so doing we are not condemning the legal profession as a whole but are fulfilling our duty to the people in bringing to light those practices which we condemn and in seeking their aid in eliminating these practices. Such a publicity campaign, if handled wisely, can bring about much good.

In all of the letters received from the attorneys of whom we inquired, there is the observation whether express or implied that the problem of eliminating unethical practice is not one of changing the rules but one of enforcement and there is the recognition that the individual members of the Bar are failing to insist that their associates maintain the high standard of ethics which we all know ought to be maintained. This reluctance on the part of individual members is, indeed, understandable. No one person wants to be a crusader in this field, particularly where it may result in keen personal hard feelings. Your Committee feels, however, that it is the duty of every member of the Bar not only to conduct himself within the limits prescribed by the rules of professional conduct, but also to insist that his brethren do likewise, but at the same time your Committee recognizes that this result can be accomplished only through the concerted action of the Bar Association so that it will be a concerted demand for proper conduct. It is, therefore, imperative that we give unified support to the persons charged with the duty of investigating and prosecuting violators of the rules and of the Committees of the association seeking to raise the ethical stand-

ards. In this connection it has been suggested that there be a Vigilance Committee or Complaint Committee in each County to constantly be on the lookout for unethical practice, and to investigate such conduct and make recommendation to the complaint authorities, and it has been suggested that publicity be given to the existence of this Committee so that members of the Bar and public generally may make complaint where complaint is needed.

Your Committee feels that probably the most concrete good can be accomplished immediately through the power of the judiciary, supplemented by the unified support of the Bar. To be more specific your Committee feels that the Judges of our Courts should be urged to take a more vigilant and vigorous attitude toward ethical practices within the scope of their judicial observation. It has been suggested that the association request and urge that all of the Judges of the State insist that the conduct of attorneys in the trials before these Judges be of the highest degree of ethical and moral conduct, and that any instance of unethical conduct in the trial of a case be dealt with promptly and sternly by the Judge as a contempt of court, if such unethical conduct amounts to a contempt, and that the proper complaint authorities of the association be advised immediately of such misconduct, and it has been suggested that the association enjoin upon its members the duty of advising the Judge at once whenever any unethical practice in the trial of a case is discovered.

This Committee recognizes that the Junior Bar Section cannot undertake to put into effect the ideas herein expressed without the wholehearted and enthusiastic support of the Mississippi State Bar Association. Your Committee feels that the Junior Bar Section should gear its activities so as to supplement the machinery existing within the State Bar Association for the handling of such matters, and that the Junior Bar Section should set up the machinery to assist the State Bar Association in making investigations of complaints of members of the Junior Bar.

Many other suggestions have been made but time does not permit a detailed outline of them all. After careful consideration your Committee makes the following specific recommendations:

(a) That there be a standing Committee of the Junior Bar Section on the unethical practice of law, charged with the duty of extending and expanding the work initiated by the present Committee.

(b) That the subject of ethics be incorporated as often as feasible on the program presented to the association at its various meetings, so that the subject of ethics and the requirements of the rules of professional conduct are constantly before the members of the Bar, and particularly the younger members thereof, and that the State Bar Association be urged to incorporate in its programs timely discussion of the various problems of professional ethics and that this be a continuing program.

(c) That the Junior Bar Section and the individual members thereof strive to bring about the enactment of legislation raising the educational and moral standard for admission to the Bar, and that it urge the State Bar Association to continue its efforts in this direction.

(d) That the Junior Bar Section request and urge the law schools of this State to place greater emphasis upon the subject of ethics as a regular part of the curricula and that these subjects deal not only with the general principles of ethics but with the particular practices which ought to be condemned.

(e) That each local Bar Association within the State of Mississippi hold frequent meetings and include in their programs the discussion of the matter of ethics

and of the particular practices to be condemned, these discussions preferably to be lead by the older and highly reputable members of the Bar.

(f) That the Junior Bar Section urge the State Bar Association to cause to be distributed to every member of the Bar a copy of the rules of professional conduct adopted by the Mississippi Bar Association.

(g) That the members of the Junior Bar Section, as one of the obligations of membership in this association, be charged with the duty of giving wholehearted support to the activities of such Committees of the Junior Bar Section as may be appointed for the furtherance of efforts to raise the ethical standards, and of the duly constituted authorities of the State Bar Association charged with the duty of investigating and dealing with ethical misconduct, and that they be further charged with the duty not only of conducting themselves according to the rules of professional conduct of this asociation but also of insisting that all of its members so conduct themselves, and of calling to the attention of the proper authorities any violations of these rules coming to their attention.

(h) That the Junior Bar Section urge the Judges of this State to take a vigilant and vigorous attitude regarding ethical conduct and to insist and require that attorneys practicing before them conduct themselves in strict accordance with the rules of professional conduct, and that any misconduct in the trial of a case be dealt with sternly and promptly by the Judge as a contempt of court, if such misconduct amounts to a contempt, and that the Judge promptly advise the proper complaint authority of the Bar Association of such misconduct; that the State Bar Association be urged to make a similar request of the judiciary.

(i) That the members of the Junior Bar Section be charged with the duty of advising the presiding Judge of any misconduct or unethical practice on the part of an attorney engaged in the trial of any pending cause, and that the State Bar Association be urged to enjoin such a duty on all of its members.

(j) That there be established within the Junior Bar Section a Committee for the handling of complaints of members of the Junior Bar Section, and that this Committee be charged with the duty of making a prompt and impartial investigation of any member of the Junior Bar Section or of any unethical conduct attributed to such member, and of making recommendation to the complaint authorities of the State Bar Association, and that the Junior Bar Section offer the services of this Committee to the State Bar Association in investigating complaints of the members of the Junior Bar Section.

(k) That the Junior Bar Section in conjunction and coordination with the various local Bar Associations, give publicity throughout the State to the subject of the requirements of the rules of professional conduct, dealing specifically with certain unethical practices so that the public may be informed of our requirements, and be urged not to place trust and confidence in attorneys who engage in unethical practice and not to encourage such unethical practice.

(l) That there be appointed in each County, or in each group of Counties, a Committee to be appointed either by the President of the Junior Bar Section or by the local Bar Associations, charged with the duty of being constantly alert for unethical practice and of investigating any alleged unethical practice and bringing it

to the attention of the proper complaint authorities, and that due publicity of the existence of such Committees be given to the Bar and to the public.

(m) That the members of the Bar be urged to seek advisory opinions of the Board of Bar Commissioners relative to any question as to the validity or propriety of any proposed course of professional conduct, such advisory opinions being authorized by law and by the by-laws of the State Bar Association.

Respectfully submitted: E. Cage Brewer, Jr., Chairman; R. W. Heidelberg, Jr., Co-Chairman.

APPENDIX B

RESOLUTIONS

RESOLUTION FAVORING REPEAL OF THE BLACK MARKET TAX

WHEREAS, under our constitution, the Government is divided into three branches, the Executive, the Legislative, and the Judicial; and

WHEREAS, there has been committed to the lawyers the sacred obligation of administering the judiciary; and

WHEREAS, all of our judges and prosecuting attorneys are lawyers and are all officers of the court and all charged with the duty of upholding and enforcing the law and protecting our people and our society from vandalism and gansterism; and,

WHEREAS, in recent years we have noticed a lowering of respect for law enforcement in our state and have observed flagrant violations of the law; and

WHEREAS, we believe the passage of the Black Market Tax is largely responsible for this disregard of law and order; and

WHEREAS, we believe it unwise and wholly inconsistent for any state to levy a tax on an illegal commodity that has no property value under the law, and which is strictly prohibited from being sold by the law, and yet on which the Legislature levied a tax of 10 per cent; and,

WHEREAS, the sheriffs and other law enforcement officers are bound under their oath of office to enforce the law and to prevent the sale of intoxicating liquors, on which the same great state has levied a tax giving the liquor business in Mississippi a semi-legal status; and

WHEREAS, the passage of the Black Market Tax has caused us to be ridiculed by other states and the people of our state have been unable to understand the inconsistency, and

WHEREAS, it is difficult for the people to see that if the State collects 10 per cent on illegal liquor sales, why it is so wrong for law enforcement officers to accept bribes from those who are engaged in this illegal traffic; and

WHEREAS, we the Resolutions Committee, are of the opinion that the Legislature of the State of Mississippi should repeal the Black Market Tax and once more be consistent and restore respect for law enforcement in our great state;

THEREFORE, BE IT RESOLVED, that we, the members of the Mississippi State Bar Association, in regular annual session assembled at Biloxi, Miss., do by these resolutions express its sentiments favoring repeal of the Black Market Tax and urging the next Mississippi Legislature to abolish this unholy tax;

(Note: By vote of the Bar, the following words are to be added here: "and we call upon them to repeal the present assinine, unenforceable and hypocritical prohibition law.")

BE IT FURTHER RESOLVED that a copy of these resolutions be spread upon the minutes of our organization, that a copy be furnished the Governor of our

State, the Speaker of the House of Representatives, the Lieutenant Governor and President of the Senate, and that a copy be furnished the press.

RESOLUTION SUPPORTING THE AMERICAN CITIZENSHIP PROGRAM

WHEREAS, it is the sworn duty as well as the pleasure and desire of every member of this bar to support our state and Federal Constitutions, and

WHEREAS, in recent years there has developed in our Federal Government and in many phases of our society a strong trend toward socialism and communism in high places, and

WHEREAS, it is the avowed purpose of communism to divide and thereby weaken us by arraying capitol against labor, race against race, class against class, and religion against religion, and

WHEREAS, our people should be alerted against the dangers that threaten the existence of our government and our American way of life, and

WHEREAS, we believe that the Mississippi State Bar has the responsibility as well as the duty to take such steps as may be within its powers to thwart this increasing threat of socialism and communism and that its program on American Citizenship can be most effective toward this end.

THEREFORE, BE IT RESOLVED by the Mississippi State Bar Association, in convention assembled, that the full strength, energy and effort of this bar as well as all County and District Bars, be consolidated behind the citizenship program, promulgated by our Honored President Gibson Witherspoon, and that civic clubs, lodges, schools, churches, and other organizations be encouraged to offer prizes and rewards to students in the schools and colleges of our state for writing the best essay on "The Evils of Socialism and Communism," "The Freedom of America as Compared to the Slavery of Communism," thereby arousing the thought and interest of our young people and alerting their minds to the dangers that surround us, like creeping paralysis; that debate may be encouraged; and that this tide of socialism and communism may be stemmed amongst the people who are now heedless of its presence.

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this body, and that a copy be handed to the press.

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Buford, James D.
Jackson
Bullock, Kenneth E.**
Shreveport, Louisiana
Bullock, Walter Earl
Columbia
Buntin, R. R.
Gulfport
Burgess, Ramon L.
Tupelo
Burgin, Wm. G., Jr.
Columbus
Burkett, Amy
Oceans Springs
Burkett, John G.
Jackson
Burns, James A.
Meridian
Burns, Robert, Jr.
Jackson
Burris, T. O., Jr.**
Jackson
Busby, Arthur G., Jr.**
Waynesboro
Busby, Charles W.
Jackson
Busby, Paul Miller
Waynesboro
Bush, Fred M., Jr.
Holly Springs
Bush, M. M.
Laurel
Bush, M. M., Jr.
Washington, D. C.
Butler, Geo. H., Jr.
Jackson
Butler, J. H.**
Stonewall
Butler, John Sharp**
Quitman
Butts, A. B.
Arlington, Virginia
Butts, Lampkin H.
Gulfport
Byars, W. G.
Jackson
Byars, Wilton V.
Bruce
Byrd, Joe G.
Meridian
Byrd, J. L.
Jackson
Byrd, J. M.
Hattiesburg
Byrd, T. H.**
Lucedale
Byrne, George A.
Washington, D. C.
Cabaniss, Lem, Jr. (Lt.)*
Ft. Myers, Virginia
Cain, James M.*
Canton
Cain, S. Robt., Jr.
Canton
Cain, Wm. S.
Canton
Caldwell, Benj. M.
Marks
Caldwell, J. H., Jr.
Charleston
Caldwell, Thos. Eugene
Jackson
Caldwell, Thos. P.
Hattiesburg
Calhoun, A. A.*
Maxwell Air Force Base,
Alabama
Calhoun, Edwin*
Jackson
Calhoun, Edwin L.
Mount Olive
Calhoun, Robt. L.
Hattiesburg
Callender, Bernard
Columbia
Callon, B. C.
Natchez
Cameron, Ben F.
Meridian
Cameron, Chas. B.
Meridian
Cameron, Overton W.
Meridian
Camp, Wm. Herman
Fulton
Campbell, Roy D.*
Greenville
Campbell, Geo. H.
Yazoo City
Campbell, Edwin, Jr.
Laurel

Campbell, T. H.
Yazoo City
Campbell, T. H., Jr.
Yazoo City
Campbell, V. Ruth
Yazoo City
Canizaro, Jack P.
Vicksburg
Canizaro, P. C., Jr.
Ft. Worth, Texas
Cannada, Robert C.*
Jackson
Cannon, Frank S.
Clinton
Caradine, J. E.
West Point
Carlisle, Robt. Taylor
West Jackson
Carlisle, Jack B.
Ackerman
Carlton, C. Sidney
Sumner
Carmichael, Gerald B.
Utica
Carmichael, Wm. D.
Crystal Springs
Carney, Frederick T.**
Memphis, Tennessee
Carney, K. A.
Clarksdale
Carothers, A. M.
Grenada
Carr, Dudley R.
Tupelo
Carr, J. M.
Newton
Carr, Michael L., Jr.
Centreville
Carruth, John Ellzey**
Borger, Texas
Carter, B. F.**
Laurel
Carter, H. T.
Columbus
Carter, Wm. O.
Jackson
Carty, Buell R.
Brookhaven
Carver, Fred A.
Jackson
Case, Joseph Troy
Brookhaven
Casey, Lunsford
Laurel
Cassedy, Wm. P.
Brookhaven
Cassidy, J. J.
McComb
Catchings, O. W.
Woodville
Catoe, Earl V., Jr.
Webb
Causey, H. F.
Cleveland
Cauthen, Nelson R.
Canton
Chadwick, Carl A.
Natchez
Chambers, Paul
Jackson
Chapman, Billy K.
Indianola
Chandler, Creighton
New Orleans, Louisiana
Chandler, Joe B., Jr.
Dallas, Texas
Chaney, George
Vicksburg
Chapman, J. Kenton
Washington, D. C.
Charles, Sarah A.
Washington, D. C.
Chase, Clarence
Booneville
Chatham, Gerald W.
Hernando
Cheney, Reynolds S.
Jackson
Chill, Bernard W. W.
Jackson
Childress, W. M.
Jackson
Chiz, Raynold
Shaw
Chirstenberry, James R.
Rolling Fork
Christian, Murray
Houston, Texas
Clark, A. B.
Indianola
Clark, A. B., Jr.
Indianola
Clark, Charles*
Jackson
Clark, Frank
Waynesboro
Clark, G. C., Jr.
Jackson
Clark, J. O.
Iuka
Clark, Lester E.
Hattiesburg
Clark, Thurman L.
Hattiesburg
Clark, Wm. C.
New Orleans, Louisiana
Clarke, Raymonde A.
Argos, Ind.
Clay, John O., Jr.
Pontotoc
Clayton, Claude F.
Tupelo
Clayton, Hugh N.
New Albany
Clayton, S. P.
Tupelo
Clayton, W. L.
Meridian
Clement, Aubrey O'Neil
Jackson
Clements, E. C.
Rolling Fork
Clements, W. H.
Rolling Fork
Clemons, James Lee
Cleveland
Cleveland, Arthur T.
Fulton
Clifford, Chas. C.
Morton
Clifton, Percy
Jackson
Cloninger, Coite E.
Washington, D. C.
Cochran, E. Louis
Arlington, Virginia
Cocke, J. W.
Jackson
Cody, F. G.
Biloxi
Cofer, Kermit R.
Water Valley
Cohen, Marvin A.
Jackson
Cohn, A. A.
Brookhaven
Cohn, Robt. D.**
Indianola
Cole, James E.
Jackson
Coleman, A. Jerry
Vaiden
Coleman, Edward F.
Purvis
Coleman, Howard C.
Tunica
Coleman, Irwin W.
West Jackson
Coleman, J. M.
Aberdeen
Coleman, James P.
Jackson
Coleman, Randolph
San Antonio, Texas
Coleman, Walter D.
Natchez
Coleman, Wm. D.
Ackerman
Collier, Wm. Richard
Hattiesburg
Collins, Curtis Lee
Natchez
Collins, Elson K.
Laurel
Collins, F. B.
Laurel
Collins, Jeff**
Laurel
Collins, Ross A.
Meridian
Collins, Robert W.
Yazoo City
Collum, Mrs. Aline
Jackson
Colmer, James Henry
Washington, D. C.
Colmer, Wm. M.
Washington, D. C.

Colson, J. G.
Greenwood
Comer, Thos. Howard**
Booneville
Conger, J. W.**
Winona
Conn, W. D., Jr.**
Jackson
Conn, W. D., Sr.
Corinth
Conner, Claude E.
Columbia
Conner, Dudley W.**
Hattiesburg
Conner, Mrs. Evelyn Hunt
Newton
Conner, R. E.
Newton
Connolly, Edwin P.
Laurel
Coody, A. S., Jr.
Jackson
Cook, Everett E.
Gulfport
Cook, Virgil G.**
Avalon
Cooley, Donald C.
Hazlehurst
Cooper, E. B.
Laurel
Cooper, Forrest G.
Indianola
Cooper, R. D.
Meridian
Cooper, Robt. F., Jr.
New Orleans, Lousiana
Cooper, S. B.**
Philadelphia
Corban, Harry L.
Fayette
Corban, L. C.
Biloxi
Corban, R. L., Jr.
Fayette
Corey, Lyle V.**
Meridian
Cornell, Bruce G.
Gulfport
Corley, W. U.
Collins
Cossar, George P.
Charleston
Cottrell, David, Jr.
Gulfport
Covington, J. A.
Meridian
Covington, Robt. E., Jr.
Quitman
Cowart, C. F.**
Meadville
Cox, Allen
Baldwyn
Cox, Ancil L., Jr.
Cleveland
Cox, Raymond S.* (Lt).
San Francisco, Cal.
Cox, Stanley M.
Detroit, Michigan
Cox, W. A.
Marks
Cox, W. H.
Baldwyn
Cox, Wm. H.
Jackson
Craft, S. W.
Raleigh
Craig, John A.
Jackson
Craggs, C. J.
Cleveland
Crain, Harold G.
Wabash
Crain, Mrs. Maxine B.
Wabash
Crawford, Marvin
Jackson
Crawley, David E., Jr.
Kosciusko
Crawley, James T., Jr.
Kosciusko
Creekmore, Rufus
Jackson
Creekmore, Wade H.**
Jackson
Cresswell, Wm. E.
Durant
Crews, Thomas R.
Banks
Crigler, James C.
St. Joseph, Louisiana
Crisler, Alfred N.
Jackson
Crisler, Bert
Jackson
Crisler, Chas. W., Jr.
Jackson
Crisler, John W.
Clarksdale
Critz, Frank A.
West Point
Crocker, Rowell T.
Washington, D. C.
Crook, Robert H.
Meridian
Cross, James J., Jr.
Laurel
Cross, Roscoe
University
Crump, C. H.
Cleveland
Crump, Nannie Mayes
Washington, D. C.
Cubley, Harold B.
Hattiesburg
Cumbest, Donald W.**
Pascagoula
Cunningham, E. Hugh
Jackson
Cunningham, F. W.
Booneville
Cunningham, J. E.
Booneville
Cunningham, James A.
Booneville
Cunningham, J. A., Jr.
Booneville
Cunningham, Lawrence P.**
Louisville
Cunningham, Mrs. Frances P.
Jackson
Currie, E. J., Jr.
Hattiesburg
Currie, George W.
Hattiesburg
Currie, Homer
Raleigh
Currie, Overton A.
Hattiesburg
Currie, Rodes Settle
Meridian
Curry, George C.
Hattiesburg
Curtis, Chester H.
Clarksdale
Custy, Arthur B.
University
Cutrer, George W., Sr.
Magnolia
Cutrer, R. W.
Magnolia
Dabbs, Daniel W.
Hattiesburg
Dabney, F. Y.
Vicksburg
Dabney, J. B.
Vicksburg
Dabney, L. Bryan
Vicksburg
Dabney. Lucius B., Jr.*
Vicksburg
Dabney, M. Burk, Jr.
Marked Tree, Arkansas
Dale, James S., Jr.
Columbia
Dale, Joseph
Prentiss
Dale, R. H.
Columbia
Dale, Sebe
Columbia
Dale, T. Price**
Hattiesburg
Dalton, Terry J.
Brooklyn, New York
Daniel, G. Odie
Starkville
Daniel, Joe H.
Jackson
Darden, Elwyn
New Albany
Darden, R. A.
Jackson
Darden, Tom Leslie
New Albany
Davenport, Joseph, Jr.
Port Gibson

Davidson, Harold W.
Carthage
Davidson, Thos. Edwin
Jackson
Davis, Cleveland
Itta Bena
Davis, Edwin D.
Port Gibson
Davis, Howard Q.
Indianola
Davis, James R.
Columbia
Davis, Jefferson
Atlanta, Georgia
Davis, James L. (Col.)*
Denver, Colorado
Davis, T. B.
Columbia
Davis, Thos. D.
Tupelo
Davis, T. W., Jr.
Hattiesburg
Davis, Walter D.
Jackson
Davis, W. S.
Waynesboro
Daws, J. H.
DeKalb
Day, J. O.
Atlanta, Georgia
Day, Lewis H.
Tampa, Florida
Day, R. H.
Decatur
Dean, Hermon
Canton
Deaton, Joe Sanford
Plantersville
Deavours, Burns M.
Laurel
Deavours, Jack
Laurel
Decell, Herman B.
Yazoo City
Deen, Robt. B., Jr.
Meridian
Dees, Anse**
Meridian
Denman, James Lowrey, Jr.
Clinton
Dennis, Glender
Ellisville
Dent, E. L.
Collins
Dent, J. R.
Gulfport
Dent, R. L.
Vicksburg
Dent, W. W.**
Collins
Denton, C. L.
Meridian
Denton, P. L.
Marks
Deterly, H. G.
Jackson
Deterly, Mrs. Ruth M.
Jackson
Diamond, Harry
Greenwood
Dickerson, Ralph S.
Kenova, West Virginia
Dickson, Archie L., Jr.
Gulfport
Dinsmore, R. R.
Jackson
Dixon, T. Vincent*
Senatobia
Dobbs, James Dennis
Ackerman
Dodd, J. Hubern
Jackson
Dogan, Dave W., Jr.
Grenada
Doggette, Grover**
Laurel
Dore, Donald E.
Lake Charles, Louisiana
Dorsey, Newman M.**
Water Valley
Dorsey, Wm. Brenard
Washington, D. C.
Dossett, Dixon
Beulah
Dottery, Rosalind
Denver, Colorado
Doty, Jackson D.
Pontotoc
Doty, Lemuel H.
Biloxi
Douglas, P. Lanier
Starkville
Dovith, Melvin
Chattahoochie, Florida
Doxey, Wall**
Holly Springs
Doxey, Wall, Jr.
Holly Springs
Drake, Carl F.
Durant
Drake, Joseph T., Jr.
Port Gibson
Dreaden, Walter E., Jr.
Jackson
Drew, Ernest R.
Washington, D. C.
Dudley, Colbert
Jackson
Dukes, Wm. F.
Hattiesburg
Dulaney, J. W.
Tunica
Dulaney, John W., Jr.
Tunica
Duncan, B. A.**
Meridian
Dunnam, John M., Jr.
Beaumont
Dunn, A. C.**
Meridian
Dunn, Edwin A.**
Meridian
Dunn, J. Thos.
Meridian
Dunn, Vardaman S.
Jackson
Dunne, Joseph L., Jr.**
Jackson, Tennessee
Dye, Bradford
Grenada
Dyer, Howard, Jr.
Greenville
Dyke, Herbert H.
Laurel
Eager, P. H., Jr.
Jackson
Easterling, Albert E.
Laurel
Easterling, Albert E., Jr.
Laurel
Easterling, Lamar F.
Jackson
Easterling, Mrs. Mary C.
San Francisco, California
Eaterling, E. Terrell**
Laurel
Eaton, James S.
Gulfport
Eavenson, Jesse W.
Marks
Edmonds, Henry
Jackson
Edmonds, T. E.
Vicksburg
Edwards, A. K.
Mendenhall
Edwards, Allan T.
Jackson
Edwards, Ernest Ray
Jackson
Edwards, J. P.
Mendenhall
Edwards, Kenneth F.
Greenville
Eicke, Woodward G.
Washington, D. C.
Elkins, Clifford
Vicksburg
Elledge, W. L.
Fulton
Elliott, Benton W.
Ripley
Engle, C. F.
Natchez
Enochs, DeWitt C.
Jackson
Estes, G. E., Jr.
Gulfport
Estes, Wm. M.**
Enterprise
Estopinal, Wm.**
Gulfport
Ethridge, Eugene B.
Georgiana, Alabama
Ethridge, F. K., Jr.
Jackson
Ethridge, Geo. H.
Jackson

Ethridge, Geo. M., Jr.
Meridian
Ethridge, Thos. R.
Oxford
Ethridge, W. N.
Oxford
Ethridge, W. N., Jr.
Jackson
Eudy, J. E.
Eupora
Evans, C. C.**
Laurel
Evans, W. J.
Calhoun City
Everett, F. E.
Indianola
Everett, Frank E., Jr.
Vicksburg
Everitt, Robert D.
Ruleville
Everett, W. M.
Hickory
Ewing, Jack H.
Jackson
Ewing, John B.
McComb
Ewing, Wm. R.
Jackson
Fair, Charles D.
Louisville
Falkner, J. W. T.
Oxford
Fancher, Jos. R., Jr.
Canton
Fankhauser, Carl E.
New Orleans, Louisiana
Fant, Herbert M.
Sardis
Fant, Lester G., Jr.
Holly Springs
Farley, Robert J.
University
Farese, John B.
Ashland
Farish, H. P.
Greenville
Farmer, Henry King
Jackson
Farrell, Herbert D.
Port Gibson
Fatheree, J. D.**
Quitman
Favre, Sam Leroy, Jr.
Bay St. Louis
Featherstone, F. M.
Moorhead
Featherstone, L. R.
Jackson
Featherstone, R. W.
Moorhead
Fedric, Wm. Henry
Grenada
Feduccia, Jos. C.
Cleveland
Feibelman, Cedric L., Jr.
Vicksburg
Felts, Holland O.
Greenville
Ferguson, Bethel
Jackson
Finch, Ellis W.
Booneville
Finch, Harold E.
Mississippi City
Finch, J. D.
Iuka
Finch, James
Hattiesburg
Finch, J. S.
Booneville
Finley, J. A.
Tupelo
Fishel, E. C.
Hattiesburg
Fitzpatrick, E. H., Jr.
Natchez
Fisher, Mrs. Margaret E.
Perry Point
Fleming, James M., Jr.**
Atlanta, Georgia
Flowers, Henry G.
Jackson
Flowers, J. N.
Jackson
Flowers, U. Grey, Jr.
Vicksburg
Floyd, Earle N.
Mississippi City
Floyd, Jason H.
Gulfport
Floyd, J. C.
Meridian
Floyd, L. R.
Magee
Fontaine, J. B.**
Pontotoc
Fontaine, W. B.
Jackson
Foote, Lawrence Y.
Hattiesburg
Ford, A. L.
Washington, D. C.
Ford, Bobbie B. (Capt.)*
Jackson
Ford, Charles W.
Pascagoula
Ford, Evon A.
Taylorsville
Ford, E. J., Jr.
Gulfport
Ford, J. I.
Pascagoula
Ford, Wm. R.
Kosciusko
Forman, J. M.
Kosciusko
Forman, L. L.
Meadville
Fortenberry, Davis T.
Hattiesburg
Forman, Richard Brent, Jr.
Natchez
Fountain, D. G.
Jackson
Fox, John H.
University
Fox, John H., III*
Oxford
Fraiser, John James, Jr.
Greenwood
Franklin, J. B.
Jackson
Franklin, J. E.**
Jackson
Franklin, Lester C.**
Jackson
Franklin, Lester C., Jr.
Jackson
Franks, Donald
Booneville
Franks, Kenneth I.
Philadelphia
Frierson, John F.
Columbus
Fuller, Harold B.
McComb
Fuller, Samuel Wm.
Laurel
Gage, Robt. D., III
Port Gibson
Galloway, Chas. R.
Gulfport
Gandy, E. Evelyn
Hattiesburg
Gandy, George**
Collins
Gantt, Cecil E.
Meridian
Garcia, Juan R.
Hatillo, Porto Rico
Gardner, Albert S.
Yazoo City
Gardner, Tom M.
Gulfport
Gardner, John M.
Gulfport
Garner, A. H.
Joplin, Missouri
Garner, Boyce Lee**
Hernando
Garner, Martin
Tunica
Garraway, J. T.**
Purvis
Gartin, Carroll
Laurel
Gary, W. D.**
Eupora
Gaston, Chester D.
Columbus
Gautier, H. W.
Pascagoula
Gee, John B.
Jackson
Geisenberger, W. A.
Natchez
Genin, R. L.
Bay St. Louis

Gerald, Eugene
Leland
Gerald, Martha W.
Jackson
Gex, Emile J., Jr.
Columbia
Gex, Lucien M.
Bay St. Louis
Gex, W. J.
Bay St. Louis
Gholson, Daniel P.
St. Louis
Gibbes, C. Denton, Jr.
Laurel
Gibbs, Tyrus Cobb
Fulton
Gilbert, V. W.
Meridian
Gilchrist, Stewart J.
Gilchrist, Oregon
Gillespie, Hugh B.
Jackson
Gillespie, Joe Ivy
Greenville
Gillespie, R. G.
Meridian
Gilliland, Ben D., Jr.
Memphis, Tennessee
Gillis, J. K.
Philadelphia
Gillis, Norman B., Jr.
McComb
Ginsberg, Herbert R.
Hattiesburg
Gipson, Champ C.
Meridian
Gipson, J. R.
Meridian
Gipson, J. V.
Meridian
Glass, D. H.
Kosciusko
Glazier, Herman C., Jr.
Rolling Fork
Good, V. W.**
Vicksburg
Goodman, F. C.*
Biloxi
Goodman, Wm. F. (Lt.)*
El Paso, Texas
Gordon, Benton R.
Union
Gordon, Chas. M.
Jackson
Gordon, C. T.
Liberty
Gordon, Joe D.
Liberty
Gordon, John H.
Belzoni
Gordon, Walter S.
Carpenter
Gore, Ney M., Jr.
Marks
Gore, T. N.
Marks
Gore, T. N., Jr.
Marks
Gore, W. E.
Jackson
Gore, Weaver E., Jr.
Jackson
Goss, Roy J.
Columbia
Graham, D. M.**
Gulfport
Graham, D. M., Jr.
Gulfport
Graham, Hardy M.
Union City, Tennessee
Graham, J. H.
Meridian
Graham, Robert S.
Jackson
Graham, S. M.
Meridian
Grant, Leslie B.
Biloxi
Grantham, R. Gordon
Jackson
Graves, Chas. L.
Jackson
Graves, Ernest W.
Laurel
Gray, Reginald A., Jr.
Hattiesburg
Greaves, J. M.
Canton
Greaves, P. D.
Gulfport
Green, A. Wigfall
University
Green, B. A.
Mount Bayou
Green, E. H.
Cleveland
Green, Garner W., Jr.
Jackson
Green, Garner W.
Jackson
Green, John T. (Lt.)*
San Francisco, California
Green, Marcellus C.
Jackson
Green, John D., Jr.
Starkville
Green, Joshua
Jackson
Green, Thos. K.
Natchez
Gregg, John Edwin
Taylorsville
Greer, Mrs. J. Herbert
Jackson
Gresham, Wm. Buford**
Booneville
Grice, L. E.
Crystal Springs
Griffin, J. R.**
Fupora
Griffin, Mrs. Julia S.
Jackson
Griffin, P. J.**
Jackson
Griffing, Homer B.
Meadville
Griffith, Lonnie E.
Prentiss
Griffith, Paul S.
Waynesboro
Griffith, Thos. J., Jr.
Ackerman
Griffith, V. A.
Jackson
Grisham, Lowell E.
Washington, D. C.
Gross, Davis
Laurel
Grower, John M.
Jackson
Grubbs, George B.
Mendenhall
Grubbs, Julius W.
Hattiesburg
Guernsey, Carl E.
Jackson
Guice, Claude W.
Jackson
Guice, Daniel D.
Biloxi
Guice, Jacob D.
Biloxi
Guice, Stephen L.**
Biloxi
Guice, W. L.
Biloxi
Guider, Ben
Vicksburg
Gunn, Wallace R.
Natchez
Gunn, William J., Jr.
Meridian
Guyton, J. D.
Kosciusko
Guyton, John Davis
Kosciusko
Gwin, Lucien C.
Natchez
Hafter, Jerome S.
Greenville
Haddock, James H.**
Philadelphia
Hagee, Talmadge M.**
McComb
Hairston, Brown C.**
Crawford
Hairston, Charles C., Jr.
Jackson
Hakes, Doric D.
Jackson
Haley, A. M.**
Jackson
Hale, Dwayne Lamar
New Albany
Hall, Francis L.
Washington, D. C.
Hall, Lee D.
Jackson

Hall, Stanton A.
Hattiesburg
Hall, Toxey
Columbia
Hall, Wm. G.
Jackson
Hamel, Frederick P.
Chattanooga, Tennessee
Hamilton, George S.
Jackson
Hamlin, James E.
West Point
Hamlin, Wilbur G.
West Point
Hamm, Wm. J.
Jackson
Hammond, Kelly J.
Columbia
Hamner, W. M.
Greenwood
Handy, Geo. Stuart
Natchez
Hannah, T. C.
Hattiesburg
Hannon, Andrew John**
Raymond
Haralson, William
Hattiesburg
Harmon, F. S.
New York, New York
Harmon, Robt. Hunter**
Meridian
Harmon, John M.
Union
Harper, A. Y.
Jackson
Harper, Chas. Edw.
Jackson
Harper, Everett L.
Pascagoula
Harper, Jack E., Jr.
Indianola
Harper, Matthew, Jr.
Jackson
Harrington, John F.
Jackson, Tennessee
Harris, Francis M.
Water Valley
Harris, W. R.
Jackson
Hartford, Robert W.*
Jackson
Hartley, T. A.
Kansas City
Harty, Emmet
Greenville
Harwell, J. Emerson
Meridian
Hathorn, C. V.
Columbia
Hathorn, F. C., Jr.
Hattiesburg
Hathorn, Hoy
Louisville
Hauberg, Robt. E.
Jackson
Hawkins, A. E.
Houston
Hawkins, Geo. Ben.
Jackson
Haydon, Charles R.
Jackson
Haynes, George Wm.
Jackson
Haynes, M. Paul
Baldwyn
Haynes, Wm. Driver
Memphis, Tennessee
Heckler, Willie J.
Greenwood
Hedgepeth, T. H.
Jackson
Hegwood, A. W.
Detroit, Michigan
Heidelberg, Cecil F., Jr.
Jackson
Heidelberg, H. P.
Pascagoula
Heidelberg, R. W.
Hattiesburg
Heidelberg, Rowland W., Jr.
Hattiesburg
Heiss, J. L., Jr.
Sedalia
Henderson, Joe Ray
Pontotoc
Henderson, Robt. Harvey
Sumner
Hendrick, Leon F.
Jackson
Hendricks, Thos. M., Jr.
Meridian
Hengen, Louis
Biloxi
Henington, Lamar
Hattiesburg
Henley, Charles B.
Jackson
Henley, Harris B.
Hazelhurst
Henley W. S.
Hazlehurst
Henry, W. A.
Yazoo City
Herring, Chas. H. (Lt.)*
Greenville
Herring, Clinton Gay
Jackson
Herring, George B.
Jackson
Herring, H. Lee
Ruleville
Hester, James D.
Laurel
Hewes, Gaston
Gulfport
Hewes, William
Gulfport
Hewitt, F. D.
McComb
Hewitt, William H.* USN
Washington, D. C.
Hewitt, W. Wilson**
Meadville
Hezel, Henry M.
Miami, Florida
Hicks, Graham H.
Natchez
Higgins, John B.
Jackson
Hilbun, Henry, Jr.
Laurel
Hill, John T.
Pascagoula
Hill, Wiley C.
Bartlesville, Oklahoma
Hillman, J. B.**
Philadelphia
Hillman, T. Horton
Lucedale
Himelstein, Ben
Moorhead
Hinerman, Chauncey D.
Moundsville, West
Virginia
Hines, Harry H., Jr.**
Kosciusko
Hines, Matelyn F.**
Rochelle Park, New
Jersey
Hobbs, H. W.
Brookhaven
Hobbs, Henry W., Jr.
Brookhaven
Hobbs, W. E.
Moorhead
Hobby, Robt. J.
University
Hoffman, Chas. L.
Culpepper, Virginia
Hoffman, Harry O., Jr.
Hazlehurst
Hogue, Hamilton M.
Jackson
Holcomb, Pat D.
Clarksdale
Holland, Clarence E.
Jackson
Holland, Ralph L.
Tupelo
Hollis, J. O.
Carthage
Holleman, Jesse Boyce
Wiggins
Holloman, Frank C.**
Laurel
Holloman, John H.
Columbus
Holmes, Edmund W., Jr.
Aberdeen
Holmes, E. R., Jr.
Jackson
Holmes, F. C., Jr.
Hernando
Holmes, G. M.
Aberdeen
Holmes, Herbert
Senatobia

Holmes, H. T.
Winona
Holmes, J. G.
Jackson
Holmes, John S.
Yazoo City
Holyfield, Thos. K.
Meridian
Hood, Josephine
Canton
Hopkins, Hugh Sam
Jackson
Hopkins, Jos. W.
Clarksdale
Hopper, H. A.
Corinth
Horan, John
Water Valley
Horan, Leo
Jackson
Hornsby, Clare B. (Mrs.)
Biloxi
Hornsby, O. M.
Natchez
Horton, Cowles
Grenada
Horton, Frank Collins
Grenada
Horton, Robertson
Winona
Horton, Wm. T.
Jackson
Hosemann, Chas. D.
Vicksburg
Houston, D. W., Sr.
Aberdeen
Houston, D. W., Jr.
Aberdeen
Houston, James R.
Jackson
Howard, Perry W.
Washington, D. C.
Howerton, Huey B.
University
Howie, Homer Lee
Jackson
Howie, Joseph**
Jackson
Huber, H. T.**
Canton
Huff, J. Knox
Forest
Hudson, Wm. E., Jr.
Vicksburg
Huff, J. Knox, Jr.
Meridian
Huff, T. Marx
Forest
Huff, Wm. A.
Forest
Huff, Wm. Jennings (Capt)*
Pensacola, Florida
Huffman, Elridge C.
New Castle, Virginia
Huffman, Theodore G.*
Roswell, New Mexico
Hughes, Abner E.
Biloxi
Hughes, Frank K.**
Kossuth
Hughes, Phillip D.
Jackson
Hulen, Mrs. Eliz. W.
Jackson
Hunt, F. M.
Hattiesburg
Hunter, H. M.**
Jackson
Hurdle, Sidney L.
Holly Springs
Hurst, Joe Jack
Macon
Hutchison, C. B.**
Tupelo
Hutchison, Edw. G.
Summit
Hutchinson, Flavous L.
Saltillo
Hutto, W. M.**
Waynesboro
Hytken, Robt. M.
Cleveland
Idom, Osborn G.
Forest
Inman, Cecil E.
Jackson
Inman, Cecil E., Jr.
Jackson
Inzer, Wm. H.
Pontotoc
Ishee, Carroll B.
Biloxi
Ivy, Gates
West Point
Jackson, Chatwin M., Jr.
Lexington
Jackson, F. B.
Jackson
Jackson, Robert E.
Cleveland
Jackson, Robt. E., Jr.
Cleveland
Jackson, Wm. F.
McComb
Jacobs, Chas. C., Jr.
Cleveland
Jaggers, Boudie A.
Pontotoc
Jameson, Jay R., Jr.
Abilene, Texas
Jarratt, Hill
Batesville
Jarvis, R. T.
Booneville
Jenkins, Thos. D.
Washington, D. C.
Jennings, Samuel N.
Kosciusko
Jiggitts, Mrs. Lavonia
Jackson
Johnson, Alvis C.
Meridian
Johnson, C. E.
Union
Johnson, D. R.
Batesville
Johnson, Forrest A.
Natchez
Johnson, H. H.
Lexington
Johnson, Jos. E.
Batesville
Johnson, Paul B., Jr.**
Hattiesburg
Johnson, Roy E.
Senatobia
Johnson, O. W.
Prentiss
Johnson, Wm. Harvey
Decatur
Johnston, Albert Sidney, Jr.
Biloxi
Johnston, H. Grady
Hernando
Johnston, Means
Greenwood
Jolly, Willis H.
Columbus
Jones, A. H.
Woodville
Jones, Bernard M.
Pickens
Jones, Bert H.
McComb
Jones, C. Randall, Jr.
Pass Christian
Jones, Ernest M.
Washington, D. C.
Jones, Edward I.
Bay St. Louis
Jones, H. F.
Belzoni
Jones, James Roy
Washington, D. C.
Jones, J. Telford**
Iuka
Jones, L. Barrett
Jackson
Jones, Laurence Clifton, Jr.
Piney Woods
Jones, P. Z.
Jackson
Jones, R. L.
Brookhaven
Jones, Sam B. T., Jr.**
Jackson
Jones, W. Arlington
Hattiesburg
Jones, W. D.
Cleveland
Jones, Woodrow C.
Waynesboro
Jones, W. Roger
Hazlehurst
Jones, W. V.
Waynesboro

Joor, J. S.
Rolling Fork
Joor, Wm. Walker
Oxford
Jordan, Albert W.
Kenova, West Virginia
Jordan, R. A.
Greenwood
Juraschek, Robt. F.**
Mathiston
Kahlmus, Maurice F.
Meridian
Katz, Andrew D.**
Hattiesburg
Katzenmeyer, C. Leonard
Vicksburg
Katzenmeyer, Leonard, Jr.
Vicksburg
Keady, Wm. C.
Greenville
Keaton, Grayson B.
Picayune
Kelley, Robert C.
Jackson
Kellner, Ernest
Greenville
Kellner, Ernest, III*
Greenville
Kellum, Joseph W.
Sumner
Kelly, A. F.
Hattiesburg
Kelly, J. W., Jr.
New Orleans, Louisiana
Kelly, R. M.
Vicksburg
Kemp, Carroll
Hazlehurst
Kendall, Henry M.
Jackson
Kendall, James T.**
Jackson
Kendrick, John M.
Edwards
Kennedy, Charles E.
McComb
Kepper, Carl W.
Washington, D. C.
Kervin, J. D., Jr.**
Jackson
Keyer, James H.
Natchez
Keyes, John K.
Collins
Keys, R. Taylor
Sardis
Kidd, A. C.
Wewoka, Oklahoma
Kilgore, Chas. D.
Jackson
Kimble, Raymond V., Jr., (Major)*
Fort Jackson, South Carolina
Kimbrell, Frank C.**
Jackson
Kimbrough, O. L., Jr.
Greenwood
King, Benj.
Hazlehurst
King, Calvin R.
Durant
King, Joe R.*
Keesler Air Force Base
King, Robt. W.
Jackson
King, S. R.
Durant
Kirby, R. H.
Clarksdale
Kirk, Lee Gibbs
Yazoo City
Kirschten, Mrs. Eliz. G.
Evanston
Knight, Jos. S.
Meridian
Knox, Baxter N., Jr.
New Albany
Koch, Harry E.
Laurel
Kuykendall, John M., Jr.
Jackson
Kuykendall, John M.
Charleston
Kuyrkendall, Roy C., Jr.
University
Kyle, John W.
Jackson
Kynard, Boyd Ernest
Bruce
Ladner, Cornelius Joseph**
Bay St. Louis
Ladner, Hiram G., Jr.
Ripley
Lake, J. A., Jr.* (Col.)
Greenville
Lamar, E. L.
Calhoun City
Lamb, Lomax B., Jr.
Marks
Land, John R., Jr.
New Orleans, Louisiana
Landman, B. R.
Jackson
Landrum, Ralph
Jackson
Landrum, Roger C.
Columbus
Lang, Eaten Adlai, Jr.
Pass Christian
Latham, W. F.
Quitman
Laub, S. B.
Natchez
Laughlin, Wm. F.
Jackson
Lawler, Wm. J.
San Rafael, California
Lawless, Michael H.
Columbia
Lawrence, T. J.
Vicksburg
Leach, Dewie Blanton
Hobbs, New Mexico
Leak, H. C.
Woodville
Leavell, Jerome Fontaine
Oxford
Lee, Dan M.**
Jackson
Lee, James Walter
Forest
Lee, John G. (Major)*
Alexandria, Virginia
Lee, Harvey A.**
Rock Hill, South Carolina
Lee, Percy M.
Jackson
Lee, Roy Noble
Forest
Lehman, Clayton E.*
Gulfport
Leigh, Jack Pendleton
Meridian
Leland, Edwin S.*
Gulfport
Lenoir, James J.
Athens, Georgia
Lenoir, Wm. Vaught, Jr.
McComb
Levingston, Alfred A.
Cleveland
Levy, Nathan, Jr.
Vicksburg
Levy, Robt. Edward
Seattle, Washington
Lewis, Clayton
Philadelphia
Lewis, Meyer A.
Jackson
Lewis, T. W., Jr.
Columbus
Lindholm, P. P.
Lexington
Lindsey, Edw. M.**
Gulfport
Lindsey, English
Gulfport
Lindsey, Ewart G.
Gulfport
Lindsey, H. Lee
Jackson
Lingle, H. B.
Petal
Lipscomb, Hubert
Jackson
Lipscomb, L. P. B.
Washington, D. C.
Little, Billy C.
Magee
Livingston, Edw. M.
Louisville
Livingston, Robert
Prentiss
Livingston, W. H.
Prentiss
Lloyd, Joseph W.
Greenville

Lloyd, Samuel Thames, Jr.*
Keesler Field
Lloyd, W. Baldwyn
Jackson
Lobrano, J. R.
Meridian
Loerke, Carl F.
Jackson
Logan, R. F. B.
Hernando
Lomax, Wm. A.**
Grenada
London, Alvin N.**
Jackson
Long, L. H.
Jackson
Long, S. H.
Tupelo
Long, Wm. Byron
Tupelo
Longino, C. S.
Clarksdale
Loomer, John B.
Yazoo City
Lopez, Arnaud O.
Biloxi
Lord, Richard Guy, Jr.
Meridian
Lott, W. H.
Greenwood
Lott, Y. D., Jr.
Mobile, Alabama
Lotterhos, Julius, L., Jr.
Crystal Springs
Lotterhos, F. J.
Jackson
Love, John Clark
Kosciusko
Love, H. M., Jr.
Yazoo City
Love, James S., Jr.
Biloxi
Love, Robert T.
Greenville
Loving, B. H.
West Point
Lowe, J. T.
Tunica
Lowrey, Stovall
Clarksdale
Lowrey, J. T.
Gloster
Lowry, Ruffin Thomson
Lafayette, Louisiana
Lucas, George L.
Columbus
Lucas, W. B.
Macon
Luckett, I. Semmes
Clarksdale
Luckett, William O.
Clarksdale
Ludlam, Warren V., Jr.
Jackson
Lumpkin, Hugh
Hernando
Lumpkin, Sam E.
Tupelo
Lundy, Mitchell M.
Philadelphia
Lyell, G. Garland
Jackson
Lyell, G. Garland, Jr.
Jackson
Lyell, Louis J.
Jackson
Lyon, Gordon L.
Indianola
Mackey, Joseph B.**
Brandon
Madole, B. F.
Shreveport, Louisiana
Magee, Otho**
Jackson
Magee, Shirley**
Monticello
Magruder, A. F.
Starkville
Magruder, J. D.**
Tunica
Majure, R. S.
Newton
Majure, Sidney B.
Newton
Malone, Maurice L.
Lucedale
Malone, N. H.
West Point
Maloney, John P.
Jackson
Mansell, Lee
Jackson
Manship, Luther
Jackson
Mansour, Philip
Greenville
Maples, Luther W.
Gulfport
Maras, Daniel Frank
Biloxi
Marble, Roland D.
Tylertown
Marsalis, O. M.
Drew
Martin, Burkette H.
Vicksburg
Martin, Ernest G., Jr.
Gulfport
Martin, G. L.
Jackson
Martin, Jeff D., Jr.
Raleigh
Martin, L. L.
Macon
Martin, Lloyd L.
Starkville
Martin, Percy A.
Fulton
Massey, Alton
Kosciusko
Massey, E. W.
Booneville
Matthews, Willis T.
Magee
Mauldin, B. P.
Pontotoc
Maxey, George D.
Ellisville
Maxwell, James M., Jr.
Jackson
Maxwell, Maurice C.**
University
May, Mrs. Rose P.
Jackson
May, Walter D.
Jackson
Mayfield, Barton**
Hattiesburg
Mayfield, Charles R., Jr.*
Frederick, Maryland
Mayfield, J. B.
Poplarville
Maynard, Fletcher F.
Clarksdale
Maynard, G. F., Jr.
Clarksdale
Maynard, Wm. H.
Clarksdale
McBee, Richard C., Jr.
Greenwood
McCants, Allan
Meridian
McClaren, L. S.
McComb
McClellan, Thompson
West Point
McClendon, B. B.
Jackson
McClintock, Geo. T.
Jackson
McClure, James, Jr.
Sardis
McCool, D. C.**
Canton
McCraw, A. B.
Philadelphia
McCraine, C. H., Jr.
Houston
McCrory, Howard B.
Forest
McCullen, Dan M.
Jackson
McCully, J. T.
DeKalb
McDade, Helen J.
DeKalb
McDill, Jack
Laurel
McDonald, Ewell J.
Jackson
McDonald, John Pink
Tupelo
McDonald, J. T.
Meridian
McDonnell, Howard A.
Biloxi

McDonough, Wm. L.
Memphis, Tennessee
McDowell, Edw. F.
Starkville
McElroy, T. H.
Oxford
McFarland, J. A., Jr.
Bay Springs
McFarland, Robt. H.
Bay Springs
McGee, Roy J.
Biloxi
McGee, S. E.
Hickory
McGhee, Wm. F.
Vicksburg
McGehee, Dan R.
Meadville
McGehee, Harvey
Jackson
McGehee, Herman B. M.* (Lt.)
Fort Jackson, South Carolina
McGehee, James Claude
Natchez
McGlohn, Charles Lee**
Levittown, L. I., N. Y.
McGough, W. M.*
Greenville
McGowan, M. M.
Jackson
McIlwain, Samuel D.
Washington, D. C.
McIlwain, W. L.
Greenville
McIntosh, Hugh, Jr.
Collins
McIntosh, L. K.
Moss Point
McIntyre, W. E.
Brandon
McIntrye, W. E., Jr.
Brandon
McKee, H. K.**
Picayune
McKee, Wm. Quinn
Starkville
McKeigney, Alexander
Jackson
McKenzie, L. Hamer
Ashland
McKibben, Dale H.
Jackson
McLain, W. G.
McComb
McLaurin, John C.
Brandon
McLean, Geo. Hite
Greenwood
McLellan, Miss Pearl
Greenwood
McLendon, Martin R.
McComb
McLeod, D. A.**
Mount Olive
McLeod, O. L.
Pascagoula
McMillan, Gerald M.
Jackson
McMorrough, G. H.
Lexington
McMullan, George K.
Jackson
McMurry, Pelham**
Paducah, Kentucky
McNutt, Robt. Norwood**
Tupelo
McRae, Fred P.
Jackson
McRaney, A. W.**
Magee
McRaney, Robert Rex
Collins
Meadows, R. B., Jr.**
Gulfport
Meek, George Daniel
Jackson
Meek, Walter B.
Eupora
Megehee, Carl A.
Pascagoula
Melton, Louise (Miss)
Raymond
Melvin, Harold Waits
Laurel
Melvin, Leonard B.
Laurel
Melvin, Leonard B., Jr.
Laurel
Menninger, Charles N.
Jackson
Merrell, G. H.
Collins
Miller, Leighton S.
Clarksdale
Miller, J. Wesley
Rolling Fork
Miller, M. V. B.
Meridian
Miller, Raymond W.
Washington, D. C.
Milling, L. F.
Jackson
Mills, Eula Bonnie
Jackson
Milestead, Claude W.
Jackson
Mims, Albert E.
Clanton, Alabama
Minniece, Thos. Y.
Meridian
Minor, Jack B.**
Meridian
Mirike, Don
Houston, Texas
Mitchell, Chas. S.
Pascagoula
Mitchell, Ely B.
Corinth
Mitchell, Guy W.
Tupelo
Mitchell, Guy W., Jr.
Tupelo
Mitchell, Joe B.
Corinth
Mitchell, Nilton H.
Jackson
Mitchell, Wm. P.
Tupelo
Mittman, Harry A.
Laurel
Mize, F. F.
Forest
Mize, Sidney C.
Gulfport
Mize, Webb
Gulfport
Monaghan, Noel
Tupelo
Moncure, Mrs. Claribel H.
Shreveport, Louisiana
Montague, Frank D., Jr.
Hattiesburg
Montgomery, Edmund W., III
Jackson
Montgomery, Gerald J.
Greenwood
Montgomery, Goode, Jr.
Laurel
Montgomery, M. B.
Jackson
Montgomery, M. B., Jr.
Yazoo City
Montgomery, V. B.
Yazoo City
Montgomery, Wm. G., Jr.*
Yazoo City
Montjoy, Paul D., Jr.
Greenwood
Montjoy, W. H.
Greenwood
Moore, Alfred
Hattiesburg
Moore, Edward D.
Jackson
Moore, Joe A.
Pascagoula
Moore, Paul M.
Calhoun City
Moore, Robt. S.
Charlotte, North Carolina
Moore, Wilburn D.
Philadelphia
Morehead, Yerger
Greenwood
Morgan, C. E.
Kosciusko
Morgan, Clarence E., Jr.
Kosciusko
Morgan, Joe P.
Ponca City, Oklahoma
Moroney, Wm. Thos.
Tupelo
Morris, F. M.**
Hattiesburg

Morris, Forrest M., Jr.
Hattiesburg
Morrison, H. L.
Okolona
Morrow, Wm. H.
Hattiesburg
Morse, Dan W.
Jackson
Morse, George E.
Gulfport
Morse, J. M.
Poplarville
Morse, Joshua M., III
Poplarville
Morse, Stanford E.
Gulfport
Morse, Stanford E., Jr.
Gulfport
Morse, Wm. E.
Jackson
Morton, Brinkley* (Lt.)
Senatobia
Morton, Perry W.
Itta Bena
Moseley, Ray V., Jr.**
Memphis, Tennessee
Moss, J. O.
Lucedale
Mounger, Breed O.**
Tylertown
Mounger, Harvey T.
Brookhaven
Mounger, Henry
Columbia
Mounger, W. M.
Jackson
Moyniham, Humphrey C.
Mobile, Alabama
Mueller, George A.
Chicago, Illinois
Mullican, Carl D., Jr.
University
Murphy, Chas. M., Jr.
Belzoni
Murphy, Williams S.
Lucedale
Murray, Harry K.
Vicksburg
Murray, J. C.
Brandon
Murray, John C., Jr.
Brandon
Murray, Thos. A.
Detroit, Michigan
Murrell, Geo. F.
Gulfport
Murry, W. V.
Hattiesburg
Napier, James Alton
Jackson
Nason, Robt. E.
Ackerman
Nason, Will A.
West Palm Beach,
Florida
Neal, George S., Jr.
Jackson
Neely, Wm. H.
Jackson
Neely, Wm. T.**
Jackson
Neill, J. C.
North Carrollton
Neill, W. C.
North Carrollton
Nelson, A. M.
Jackson
Netterville, Robt. L.
Natchez
Nettles, S. R.
Meridian
Nevels, Mrs. Alice
Jackson
Neville, G. B.
Meridian
Neville, Wm. deB.
Meridian
Newcomb, Hugo
Jackson
Newman, W. R., Jr.
Jackson
Newton, Paul M.
Wiggins
Newton, Robert S.
Wiggins
Nichols, James Edw.
Vicksburg
Nichols, Robt. G., Jr.
Jackson
Nichols, R. L.
Forest
Nix, Chas. R.
Memphis, Tennessee
Noble, J. F.
Brookhaven
Noble, James F., Jr.
Brookhaven
Nobles, Geo. R.
Jackson
Nobles, Roy P.
Laurel
Norquist, S. Griffin
Yazoo City
Norris, Mrs. Mildred W.
Brookhaven
Norsworthy, Clinch G., III
Jackson
Norsworthy, Jase Owen
Jackson
North, Linton D.
Belzoni
North, L. G.
Belzoni
Nunnery, Paul N.
Hollandale
Oates, O. M.
Bay Springs
O'Barr, Walter M.
Okolona
Odom, H. T.
Greenwood
Odom, Tillie**
Jackson
Odom, Wm. Harold
Laurel
O'Donnell, David E.**
Inverness
Ogden, J. N.
Mobile, Alabama
O'Mara, Junior
Jackson
Ormond, Seaborn E.**
Jackson
Osborne, Roy L.
Ocean Springs
Oswald, Robt. Holmes
Jackson
Ott. Thos. D.*
Hattiesburg
Overstreet, N. W., Jr.
Jackson
Owen, Ben
Columbus
Owen, Harry D.
Jackson
Owens, H. S.
Jackson
Owings, Wm. R.
Gulfport
Pace, Wm. Merle
Iuka
Pacific, Larry A.
Laurel
Pack, Samuel V.
Laurel
Paine, Tom F.
Aberdeen
Palmer, James E.
Meridian
Palmer, Merle F.
Pascagoula
Palmer, Owen T., Jr.
Gulfport
Palmes, G. V.
Bethesda, Maryland
Parker, H. H.
Poplarville
Parker, James E.
Meridian
Parker, Percy F.
Canton
Patterson, Albert T.
Calhoun City
Patterson, C. F.
Natchez
Patterson, E. B.
Monticello
Patterson, James N.
Monticello
Patterson, Joe T.
Jackson
Patterson, J. P.*
Monticello
Patterson, Robt. D.
Aberdeen
Patterson, Wm. R.
Beaumont, Texas

Patton, Fred B.
Oxford
Patton, Wright
New Orleans, Louisiana
Pavlik, Louis A.
Brookhaven
Peacock, George E.
Mendenhall
Pearson, John L., III
Rosedale
Pearson, Thomas H.
Clarksdale
Pegram, T. E.
Ripley
Pegram, Thos. E., Jr.
Ripley
Penny, John Lamar
Jackson
Perkins, John E.
Baton Rouge, Louisiana
Perry, Marshall
Grenada
Perry, Robt. E.
Jackson
Peteet, Porter
Greenwood
Peterson, M. J.
Laurel
Petty, R. J.**
Greenwood
Phillips, Chas. W.
Baton Rouge, Louisiana
Phillips, John A.
Macon
Phillips, Logan B.*
Jackson
Phillips, O. W.
Magnolia
Phillips, Robt. P.
Brookhaven
Phillips, Rubel Lex
Corinth
Phillips, Walter J.
Bay St. Louis
Pierce, James M.
Greenwood
Pierce, M. F.
Greenwood
Pierce, W. W.**
Jackson
Pigford, Howard R.
Meridian
Pigott, Joe N.
McComb
Pilgrim, M. A.
Jackson
Pinnix, James A.
Amory
Pippen, Albert C.
West Point
Pittman, Claude F.
Hattiesburg
Pittman, Claude F., Jr.
Hattiesburg
Pittman, Homer
Hattiesburg
Pittman, Luther D.
Raleigh
Pittman, Samuel Ira
Greenville
Poitevent, Schuyler, Jr.
Ocean Springs
Pollard, Chas. A.
Greenwood
Pollard, R. V., Jr.
Jackson
Pollard, R. V.
Greenwood
Poole, John R.
Jackson
Poole, M. H.
Liberty
Pope, Henry E.
Columbia
Pope, Moran M., Jr.
Hattiesburg
Porter, L. B.
Union
Porter, Leon L., Jr.
Clarksdale
Powell, Don H.
Vicksburg
Powell, Robert H.
Canton
Powell, Robt. H., Jr.
Canton
Pratt, Walter F.
Jackson
Preston, John Basil
Glasgow, Kentucky
Pressgrove, Alvin L., Jr.
Oxford
Pressler, H. P., Jr.
Houston, Texas
Prewitt, John Wm.
Vicksburg
Price, James E., Jr.
Corinth
Price, J. H.
Indianola
Price, John H., Jr.
Indianola
Price, J. H., Jr.
Magnolia
Price, James W.
Oxford
Price, Kenneth G.
McComb
Price, Mrs. Zelma W.
Greenville
Pringle, Victor B.
Biloxi
Prisock, Neal
Louisville
Prisock, Lee V.
Jackson
Prisock, Robt.
Philadelphia
Provine, Leon E.
Grenada
Prude, J. L.
Clarksdale
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